TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 255

OSCAR THORNTON, SHABIE THORNTON, INMAN THORNTON, ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 26, 1925

CERTIORARI GRANTED MARCH 9, 1925

(30,829)

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[fol. a] CAPTION—Omitted

[fol. 1] **IN UNITED STATES DISTRICT COURT, JUNE TERM, 1923**

UNITED STATES OF AMERICA,
Southwestern Division,
Southern District of Georgia:

INDICTMENT—Filed June 14, 1923

The grand jurors of the United States, selected, chosen, and sworn in and for the Southwestern Division of the Southern District of Georgia, upon their oaths present:

First Count

That heretofore, to-wit, on the tenth day of July, in the year Nineteen Hundred Twenty, one Oscar Thornton, one Shabie Thornton, one Inman Thornton, one Wesley McDonald, one Waverly McDonald, one Tinker Carroll, one J. B. Hicks, one W. W. Pennington, one H. J. Carter, alias Mann Carter, one Fred Carter, one Will Carter, one Borah Carter, one Floyd Carter, one George Herndon, one Rader Carter, one Wiley Corbett, one Frank Staten, one E. W. Prescott, one Buck Carter, one Neely Hires, one Jim Howell, whose further respective given names are to the said grand jurors unknown, hereinafter termed defendants, and others to the grand jurors unknown, did, in the County of Echols, within the Southwestern Division of the Southern District of Georgia, and within [fol. 2] the jurisdiction of this Court, unlawfully, willfully, and knowingly conspire, combine, agree, and confederate together to commit an offense against the United States, that is to say said defendants, above named, did on said date, within the jurisdiction hereinbefore set out, and continuously thereafter up to the finding and return of this indictment, unlawfully, willfully, and knowingly, conspire, combine, confederate and agree to use deadly and dangerous weapons, to-wit shotguns, pistols, revolvers, rifles, and other weapons, to the Grand Jurors unknown, for the purpose of deterring and preventing R. S. English, H. J. Murphey, W. D. Counts, J. P. Wimberly, Henry Howell, Roy S. Ritchey, John Lofton, Junior, Frank Peterson and Max C. Lochridge, all employees of the Bureau of Animal Industry of the United States Department of Agriculture, from discharging their duties as such employees of said Bureau of Animal Industry, which said employees were then and there charged with the duty of supervising the dipping of, and causing to be dipped, cattle, to-wit; cows, bulls, yearlings, calves, and oxen, in order to prevent the spread of splenetic fever among cattle, and in order to eradicate and remove from tick-infested animals what is commonly known as the cattle fever tick, which said weapons, aforesaid, were used in divers and sundry ways for the purpose aforesaid, that is to

say said weapons were then and there used by said defendants by firing same at, towards, and in the direction of said employees of said Bureau of Animal Industry, and were used for the shooting and killing the said Max C. Lochridge, an employee of said Bureau of Animal Industry, and by shooting and wounding said Roy S. Ritchey, an employee of the Bureau aforesaid, and by the use of knucks upon the person of one W. D. Counts, an employee of the [fol. 3] Bureau aforesaid, and as well for the purpose of threatening, and intimidating said employees of the Bureau aforesaid, in conjunction with the use of vile, vulgar, and obscene language, too vile, vulgar and obscene to be herein set out, and a permanent record made thereof in this Honorable Court, which said weapons so used as aforesaid, were then and there used with intent to commit a bodily injury upon said employees of the Bureau aforesaid, who were then and there engaged in the performance of their duties as employees of said Bureau of Animal Industry, and were then and there performing their duties as such employees, it being then and there well known to said defendants and to each of them, that the said R. S. English, H. J. Murphey, W. D. Counts, J. P. Wimberly, Henry Howell, Roy S. Ritchey, John Lofton, Junior, Frank Peterson, and Max C. Lochridge were employees of the Bureau aforesaid, and were then and there engaged in the performance and execution of their duties as such.

Overt Act One

And in furtherance of said conspiracy and in order to effect the objects thereof, the said defendants did, on or about the 27th day of August, in the year Nineteen Hundred and Twenty-two, incite, encourage, and cause the said Oscar Thornton, Shabie Thornton, Inman Thornton, Wesley McDonald, Waverly McDonald and Tinker Carroll to shoot at, towards, and in the direction of said employees of the Bureau aforesaid, who were then and there in camp for the night at what was and is known as Camp McKinnon, in said County of Echols, which said defendants in this overt act named, [fol. 4] did then and there use deadly and dangerous weapons, to-wit: shotguns, pistols, rifles, and other deadly and dangerous weapons to the Grand Jurors unknown, by shooting at, towards, and in the direction of said employees of the Bureau aforesaid, as in this overt act hereinbefore set out, with intent then and there to commit bodily injuries upon said employees, and to deter and prevent them from discharging their duties as such employees, said defendants, and each of them, in this indictment and in this overt act named, then and there well knowing that said R. S. English, H. J. Murphey, W. D. Counts, J. P. Wimberly, Henry Howell, Roy S. Ritchey, John Lofton, Junior, Frank Peterson, and Max C. Lochridge were then and there employees of the Bureau aforesaid, and then and there engaged in the performance of their duties as such.

Overt Act Two

And in furtherance of said conspiracy and in order to effect the objects thereof, the said defendants did on or about the third day

of February, in the year Nine- Hundred Twenty-three, incite, encourage, and cause the said Mann Carter and the said Will Carter, defendants as aforesaid, to unlawfully, willfully, and knowingly, and without justification, or in defense of their own lives, or to avoid bodily injury to themselves, or in defense of their own homes or families, shoot, kill, and murder the said Max C. Lochridge, an employee of the Bureau aforesaid, and to wound the said Roy S. Ritchey, an employee of the Bureau aforesaid, by then and there shooting the said Max C. Lochridge and the said Roy S. Ritchey with shotguns, pistols, and other deadly and dangerous weapons to the [fol. 5] Grand Jurors unknown, they, the said Max C. Lochridge and the said Roy S. Ritchey, being then and there engaged in the discharge of their duties as such employees of the Bureau aforesaid, in said County of Echols.

Overt Act Three

And in furtherance of said conspiracy, and in order to effect the objects thereof, said defendants did unlawfully, willfully, and knowingly incite, encourage, and cause the said Mann Carter, the said Will Carter, and the said Fred Carter, defendants as aforesaid, in said County of Echols, to assault and beat the said W. D. Counts, an employee of the Bureau aforesaid, with a deadly and dangerous weapon, to-wit: knucks, which they, the said Will Carter and the said Mann Carter and the said Fred Carter, did then and there have and use upon the person of the said W. D. Counts, who was then and there engaged in the discharge of his duties, said assault being made on and upon the said W. D. Counts, with intent then and there to commit bodily injury upon him.

Overt Act Four

And in furtherance of said conspiracy and in order to effect the objects thereof, the said defendants did, on or about the fifteenth day of June, in the year Nineteen Hundred and twenty-two, cause Wiley Corbett, George Herndon, Rader Carter, Floyd Carter, E. W. Prescott, Mann Carter, Will Carter and Frank Staten to use deadly and dangerous weapons, to-wit: rifles, shotguns, pistols, and other [fol. 6] deadly and dangerous weapons to the Grand Jurors unknown, with intent to commit a bodily injury upon one John Lofton, Junior, and one Frank Peterson, employees of the Bureau of Animal Industry of the Department of Agriculture, then and there engaged in the discharge of their duties as such employees, and who were then and there guarding what is commonly known as the Prime Vat, for the purpose of preventing the destruction of same, said deadly and dangerous weapons being discharged at, towards, and in the direction of the said John Lofton, Junior, and the said Frank Peterson by the said Wiley Corbett, George Herndon, Rader Carter, Floyd Carter, E. W. Prescott, Mann Carter, Will Carter, and Frank Staten, with in'ent then and there to commit a bodily injury upon them, the said John Lofton, Junior, and the said Frank Peterson, and to pre-

vent and deter the said Lofton and Peterson from discharging their duties; contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the said United States.

Second Count

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present that heretofore, to-wit; on or about the first day of July, in the year Nineteen Hundred twenty, the said Oscar Thornton, Shabie Thornton, Inman Thornton, Wesley McDonald, Waverly McDonald, Tinker Carroll, J. B. Hicks, W. W. Pennington, H. J. Carter, alias Mann Carter, Fred Carter, Will Carter, Borah Corbett, Floyd Carter, George Herndon, Rader Carter, Wiley Corbett, Frank Staten, E. W. Prescott, Buck Carter, Neely Hires, and Jim Howell, whose respective further given names are to the said Grand Jurors [fol. 7] unknown, hereinafter termed defendants, and others to the Grand Jurors unknown, did, in the County of Echols, within the Southwestern Division of the Southern District of Georgia, and within the jurisdiction of this Court, unlawfully, willfully and knowingly conspire, combine, confederate, and agree together to commit an offense against the United States, that is to say, said defendants did at the time and place aforesaid, and continuously thereafter, on divers dates to the Grand Jurors unknown, up to the finding of this indictment, unlawfully, willfully and knowingly conspire, combine, confederate, and agree to forcibly impede and interfere with R. S. English, H. J. Murphey, W. D. Counts, J. P. Wimberly, Henry Howell, Roy S. Ritchey, John Lofton, Junior, Frank Peterson, and Max C. Lochridge, all employees of the Bureau of Animal Industry of the Department of Agriculture of the United States, in the execution of their, the said employees duties, said employees being then and there engaged under the Bureau aforsaid, in supervising and causing the dipping of cows, bulls, calves, and yearlings for the purpose of preventing the spread of splenetic fever and for the purpose of eradicating from said cattle what is commonly known as the cattle fever tick, by then and there dynamiting and causing to be dynamited, burning, and causing to be burned, cattle dipping vats, and cattle spray pens, which had been sunk, built, and erected in said County, of Echols, said defendants then and there well knowing that the said R. S. English, E. J. Murphey, W. D. Counts, J. P. Wimberly, Henry Howell, Roy S. Ritchey, John Lofton, Junior, Frank Peterson, and Max C. Lochridge, were then and there employees of the Bureau aforesaid, and engaged in the discharge of their duties as [fol. 8] such employees, and that their duties required the use of dipping vats and spray pens.

Overt Act One

And in furtherance of said conspiracy and in order to effect the objects thereof, the said defendants did, on divers dates between July first, in the year Nineteen Hundred Twenty, and the finding and return of this indictment, said dates being to the Grand Jurors un-

known, blow up with dynamite, and other high explosives, to the Grand Jurors unknown, vats and spray pens, commonly known as follows, to-wit: The Prime Vat, the Lister Vat, the Dukes Vat, the Smith Carter Vat, the Wiley Corbett Vat, the J. H. Howell Vat, the William Carter Vat, the J. A. Copeland Vat, the Prevaux Vat, the Morse-Carter Vat, the Alderman Vat, the Ritter Vat, the King Vat, the Statenville Vat, and Williams Vat; and in furtherance and in pursuance of said conspiracy, did burn and cause to be burned the Smith-Carter Spray Pen, the Duke Spray Pen, the Williams Spray Pen, and the William Carter Spray Pen.

Overt Act Two

And in furtherance of said conspiracy and in order to effect the objects thereof, the said defendants did unlawfully, willfully, and knowingly encourage, incite, and cause one Neely Hires and one Floyd Carter to burn what was commonly known as the Smith-Carter Cattle Spray Pen, which said Pen was then and there situate and located in said County of Echols, which said pen was burned on or about the fifteenth day of June, in the year Nineteen Hundred and Twenty-two.

[fol. 9] Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the said United States.

Charles L. Redding, Assistant United States Attorney. E. T. Hines, Foreman of the Grand Jury.

In United States District Court for the Southern District of Georgia, Southwestern Division

No. 688

United States of America

vs.

Oscar Thornton, Sharie Thornton, Inman Thornton, Wesley McDonald, Waverly McDonald, Tinker Carroll, J. B. Hicks, W. W. Pennington, H. J. Carter, alias Mann Carter; Fred Carter, Will Carter, Borah Corbett, Floyd Carter, George Herndon, Rader Carter, Wiley Corbett, Frank Staten, E. W. Prescott, Buck Carter, Neely Hires, and Jim Howell.

Indictment for Conspiracy

Demurrer to Indictment—Filed Feb. 27, 1924

Come now the defendants in the above stated case, upon arraignment and before pleading to the merits, and demur to the first count

in the indictment therein, and move that the same be quashed upon the following grounds, to-wit:

[fol. 10] 1

Because no crime against the laws of the United States is charged in said County against these defendants, or either of them.

2

Because it appears from the allegations in said count that the duties with which the employees of the Bureau of Animal Industry, whose names are set out therein, were charged, and in the performance of which they are alleged to have been engaged at the time the several overt acts are alleged to have been committed, to-wit: Supervising of and causing to be dipped cattle, were not duties with which they were legally charged as such employees of the Bureau of Animal Industry, nor were they such duties as they could legally perform as such employees.

3

Because in said count the defendants are charged with having conspired to commit an offense against the United States, and that in furtherance of the conspiracy, they committed the various overt acts therein set forth, for the purpose of deterring and preventing the alleged employees of the Bureau of Animal Industry of the United States Department of Agriculture from discharging their duties as such, to-wit: Causing cattle to be dipped for the purpose therein alleged, whereas, under the law, said alleged employees of the Bureau of Animal Industry were not charged with such duty and could not legally perform the same in the State of Georgia.

[fol. 11] 4

Because there is no law vesting in said alleged employees of the Bureau of Animal Industry of the United States Department of Agriculture, as such, authority to perform the duties with which it is alleged they were charged, and in the performance of which it is alleged they were engaged at the time the several overt acts were committed for the purpose in said count set out.

5

Because it is not alleged in said count that the State of Georgia ever accepted rules and regulations for the suppression and extirpation of contagious, infectious and communicable diseases among live stock, prepared by the Secretary of Agriculture and by him certified to the executive authority of said State, or that the plans and methods for the suppression and extirpation of said diseases heretofore adopted by the State of Georgia have been accepted by the Secretary of

Agriculture. Nor is it alleged in said count that the Governor, or other properly constituted authority of the State of Georgia, has signified a readiness to co-operate for the extinction of any such disease, in conformity with the provisions of the Act of Congress of May 29th, 1884, entitled "An Act for the Establishment of a Bureau of Animal Industry," etc., and especially of section three thereof. Therefore, it is not shown by the allegations in said count that the alleged employees of the Bureau of Animal Industry had any right or authority to supervise the dipping of cattle, or to cause cattle to be dipped in said State, for the purpose in said count set out.

[fol. 12]

6

Because said count of said indictment, and the matters and things therein set forth, do not show or state that the cattle, the dipping of which the employees of the Bureau of Animal Industry of the United States Department of Agriculture were supervising and causing to be done in order to prevent the spread of splentic fever among cattle, and in order to eradicate and remove from them what is commonly known as the cattle fever tick, were subjects of interstate commerce, or that said cattle had in any way become subject to the supervision, or control or power of Congress under the Constitution.

7

Because the Act of Congress, approved May 29th, 1884, entitled "An act for the Establishment of a Bureau of Animal Industry," etc., under and by virtue of which the employees of the Bureau of Animal Industry of the United States Department of Agriculture are alleged to have been charged with the duty of supervising the dipping of and causing to be dipped cattle, and under and by virtue of which said employees were supervising the dipping of and causing to be dipped the cattle mentioned in said indictment, is unconstitutional, in that said act, and especially section three thereof, attempts to give to the Secretary of Agriculture the authority to spend so much of the money appropriated by said act as may be necessary in such investigations and in such disinfections and quarantine measures as may be necessary to prevent the spread of disease, to-wit: "contagious, infectious and communicable diseases" among cattle from one State or Territory into another, whereas, the State of Georgia did not dele-
[fol. 13] gate to the United States by the Constitution any right of supervision or any power over the work of disinfection and quarantine of cattle within the State of Georgia, except when said cattle shall have, at any time become the subjects of interstate commerce, and said act seeks to delegate to the Secretary of Agriculture, and through him to the employees of the Bureau of Animal Industry of the United States Department of Agriculture, rights and powers and duties, which were reserved to the States and to the State of Georgia, and were not delegated as aforesaid to the United States or to the Congress thereof, or to any of the officers who derive their

authority and exercise their offices and perform their duties under and by virtue of any law passed by the Congress of the United States.

8

Because the Act of Congress, approved May 29th, 1884, entitled "An Act for the Establishment of a Bureau of Animal Industry," etc., which act by section three thereof gives to the Secretary of Agriculturre authority to expend so much of the money appropriated by said act as may be necessary in such investigations and in such disinfection and quarantine measures as may be necessary to prevent the spread of diseases, to-wit: "contagious, infectious and communicable" diseases among cattle from one State or territory into another, does not vest in the Secretary of Agriculture of the United States, or in the Bureau of Animal Industry mentioned in said count of said indictment authority to appoint agents and employees and to charge them with the duty of supervising and dipping and causing to be dipped cattle, in order to prevent the spread of splenetic fever among cattle, and in order to eradicate and remove from tick [fol. 14] infected areas what is commonly known as the cattle fever tick, and therefore the employees of the Bureau of Animal Industry of the United States Department of Agriculture, named and mentioned in said count of said indictment, were not, at the time mentioned, in said count of said indictment when the defendants are alleged to have committed the offenses charged therein, officers or employees of the Bureau of Animal Industry of the United States Department of Agriculture, engaged in the execution of their duties as such legally delegated to them nor was said acts of the defendants charged in said count of said indictment committed on account of the execution of their legally delegated duties.

And upon arraignment and before pleading to the merits, the defendants demur to the second count in said indictment, and move that the same be quashed, upon the following grounds, to-wit:

1

Because no crime against the laws of the United States is charged in said count against these defendants, or either of them.

2

Because it appears from the allegations in said count that the duties with which the employees of the Bureau of Animal Industry, whose names are set out therein, were charged, and in the performance of which they are alleged to have been engaged at the time the several overt acts are alleged to have been committed, to-wit. Supervising of and causing to be dipped cattle, were not duties with which they are legally charged as such employees of the Bureau of Animal In- [fol. 15] dustry, nor were they such duties as they could legally perform as such employees.

3

Because in said count the defendants are charged with having conspired to commit an offense against the United States and that in furtherance of the conspiracy they committed the various overt acts therein set forth, for the purpose of deterring and preventing the alleged employees of the Bureau of Animal Industry of the United States Department of Agriculture from discharging their duties as such, to-wit: Causing cattle to be dipped for the purpose therein alleged, whereas, under the law, said alleged employees of the Bureau of Animal Industry were not charged with such duty and could not legally perform the same in the State of Georgia.

4

Because there is no law vesting in said alleged employees of the Bureau of Animal Industry of the United States Department of Agriculture, as such, authority to perform the duties with which it is alleged they were charged, and in the performance of which it is alleged they were engaged at the time the several overt acts were committed for the purpose in said Count set out.

5

Because it is not alleged in said count that the State of Georgia ever accepted rules and regulations for the suppression and extirpation of contagious, infectious and communicable diseases among the live stock, prepared by the Secretary of Agriculture and by him [fol. 16] certified to the executive authority of said State, or that the plans and methods for the suppression and extirpation of said diseases heretofore adopted by the State of Georgia have been accepted by the Secretary of Agriculture. Nor is it alleged in said count that the Governor, or other properly constituted authority of the State of Georgia, has signified a readiness to co-operate for the extinction of any disease, in conformity with the provisions of the Act of Congress of May 29th, 1884, entitled "An Act for the establishment of a Bureau of Animal Industry," etc., and especially of section three thereof. Therefore it is not shown by the allegations in said count that the alleged employees of the Bureau of Animal Industry had any right or authority to supervise the dipping of cattle, or to cause cattle to be dipped in said State for the purpose in said count set out.

6

Because no duty with which the alleged employees of the Bureau of Animal Industry were legally charged, required the use by them of dipping vats and spray pens.

7

Because said count of said indictment and the matters and things therein set forth, do not show or state that the cattle, the dipping of which the employees of the Bureau of Animal Industry of the United States Department of Agriculture were supervising and causing to be done in order to prevent the spread of splenetic fever among cattle, and in order to eradicate and remove from them what is commonly known as the cattle fever tick, were subjects of interstate commerce, or that said cattle had in any way become subject to the supervision, or control or power of Congress under the Constitution.

[fol. 17]

8

Because the Act of Congress, approved May 29th, 1884, entitled "An Act for the establishment of a Bureau of Animal Industry," etc., under and by virtue of which the employees of the Bureau of Animal industry of the United States Department of Agriculture are alleged to have been charged with the duty of supervising the dipping of and causing to be dipped cattle, and under and by virtue of which said employees were supervising the dipping of and causing to be dipped the cattle mentioned in said indictment, is unconstitutional, in that said act, and especially section three thereof, attempts to give to the Secretary of Agriculture the authority to spend so much of the money appropriated by said act as may be necessary in such investigations and in such disinfections and quarantine measures as may be necessary to prevent the spread of diseases, to-wit: Contagious, infectious and communicable diseases" among cattle from one State or territory into another, whereas, the State of Georgia did not delegate to the United States by Constitution any right of supervision or any power over the work of disinfection and quarantine of cattle within the State of Georgia, except when said cattle shall have, at any time, become the subjects of interstate commerce, and said act seeks to delegate to the Secretary of Agriculture, and through him to the employees of the Bureau of Animal Industry of the United States Department of Agriculture, rights and powers and duties, which were reserved to the States and to the State of Georgia, and were not delegated as aforesaid to the United States or to the Congress thereof, or to any of the officers who derive their authority and exercise their offices and perform their duties under [fol. 18] and by virtue of any law passed by the Congress of the United States.

9

Because the Act of Congress, approved May 29th, 1884, entitled "An Act for the Establishment of a Bureau of Animal Industry," etc., which act by section three thereof gives to the Secretary of Agriculture authority to expend so much of the money appropriated by said Act as may be necessary in such investigations and in such disinfection and quarantine measures as may be necessary to prevent the spread of diseases, to-wit: "contagious, infectious and communicable" diseases, among cattle from one State or territory into another,

does not vest in the Secretary of Agriculture of the United States, or in the Bureau of Animal Industry mentioned in said count of said indictment authority to appoint agents and employees and to charge them with the duty of supervising and dipping and causing to be dipped cattle, in order to prevent the spread of splenetic fever among cattle, and in order to eradicate and remove from tick infected areas what is commonly know- as the cattle fever tick and therefore the employees of the Bureau of Animal Industry of the United States Department of Agriculture, named and mentioned in said count, of said indictment, were not, at the times mentioned in said count of said indictment when the defendants are alleged to have committed the offenses charged therein, officers or employees of the Bureau of Animal Industry of the United States Department of Agriculture, engaged in the execution of their duties as such legally delegated to them, nor were said acts of the defendants charged in said count of said indictment committed on account of the execution of their legally delegated duties.

[fol. 19] And upon their several grounds of demurrer, defendants pray the judgment of the Court that said indictment and each count thereof be quashed.

E. K. Wilcox, Franklin & Langdale, Wilson & Bennett, Branch & Snow, Attorneys for Defendants.

After argument the above demurrer is overruled, this February 27th, 1924.

Wm. H. Barrett, Judge.

In United States District Court

Plea of Not Guilty

The defendants, Oscar Thornton, Shabie Thornton, Inman Thornton, Wesley McDonald, Waverly McDonald, Tinker Carroll, J. B. Hicks, W. W. Pennington, H. J. Carter, Fred Carter, Will Carter, Bora Corbett, Floyd Carter, George Herndon, Rader Corbett, Wylie Corbett, Frank Staten, E. W. Prescott, Buck Carter, Neely Hires and Jim Howell, waives arraignment and pleads not guilty in open Court, this 27th day of February, 1924.

Wilson & Bennett, Franklin & Langdale, E. K. Wilcox, Branch & Snow, Attorneys for Defendants.

[fol. 20] In United States District Court

Verdict

We the Jury find the following defendants guilty: Oscar Thornton, Shabie Thornton, Inman Thornton, Wesley McDonald, Waverly McDonald, and Tinker Carroll.

We the Jury find the following defendants not guilty: Fred Carter, Will Carter.

We the Jury find the folowing defendants not guilty: Fred Carter, Floyd Carter, Rader Carter, Buck Carter, J. B. Hicks, W. W. Pennington; Borah Corbett, George Herndon, Wiley Corbett, Frank Staten, E. W. Prescott, Neely Hires, Jim Howell.

Samuel Purvis, Foreman.

This March 12th, 1924.

IN UNITED STATES DISTRICT COURT

JUDGMENT AND SENTENCE

Whereupon, it is considered, ordered, and adjudged by the Court, that the said defendants, Oscar Thornton, Shabie Thornton, Inman Thornton, Wesley McDonald, Waverly McDonald and Tinker Carroll, each, be imprisoned in the common jail of Lowndes County, for the term of six months, or until otherwise discharged by law.

In open Court, this the 13th day of March, 1924.

Wm. H. Barrett, United States Judge.

[fol. 21] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME FILED—March 13, 1924

Certain of the defendants in the above stated case, to-wit: Oscar Thornton, Shabie Thornton, Inman Thornton, Wesley McDonald, Waverly McDonald and Tinker Carroll, having been convicted, it is now, for good cause shown, ordered by the Court that the time in which said named defendants should prepare and present for approval and filing a bill of exceptions in said case, be, and the same is hereby extended until the 17th day of May, 1924, and that such bill of exceptions may be presented to the undersigned Judge of said Court, wherever he may be at the time.

Granted in open Court, this March 13th, 1924.

Wm. H. Barrett, U. S. Judge.

[fol. 22] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING SUPERSEDEAS—Filed March 13, 1924

Certain of the defendants in the above stated case, to-wit: Oscar Thornton, Shabie Thornton, Inman Thornton, Wesley McDonald,

Waverly McDonald and Tinker Carroll, having been convicted, and an order having been granted allowing them until the 17th day of May, 1924, to present for approval and filing a bill of exceptions in said case, it is now, upon motion of counsel for said named defendants, ordered that a supersedeas be and the same is hereby granted, and that sentences imposed be stayed until further order. In the meantime said defendants may be discharged upon giving bonds, with good security, to be approved by the Clerk of this Court, or one of his deputies, in the amounts set opposite their names below, to-wit:

Shabie Thornton	$1,000
Oscar Thornton	"
Inman Thornton	"
[fol. 23] Wesley McDonald	"
Waverly McDonald	"
Tinker Carroll	"

conditioned for the appearance of said defendants to abide the final judgment of the Court in said case.

Granted in open Court, this 13th day of March, 1924.

Wm. H. Barrett, U. S. Judge.

IN UNITED STATES DISTRICT COURT

[Title omitted.]

ORDER EXTENDING TIME—Filed May 17, 1924

For good cause shown, it is ordered by the Court that the time heretofore allowed certain of the defendants in the above stated case, to-wit: Oscar Thornton, Shabie Thornton, Inman Thornton, Wesley McDonald, Waverly McDonald and Tinker Carroll, in which to prepare and present for approval and filing, a bill of exceptions in said [fol. 24] case, be, and the same is hereby further extended until the 17th day of June, 1924, and that such bill of exceptions may be presented to the undersigned Judge of said Court wherever he may be at the time.

Granted in open Court, this May 15th, 1924.

Wm. H. Barrett, U. S. Judge.

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME—Filed June 19, 1924

For good cause shown, it is ordered by the Court that the time heretofore allowed certain of the defendants in the above stated case,

to-wit: Oscar Thornton, Shabie Thornton, Inman Thornton, Wesley McDonald, Waverly McDonald and Tinker Carroll, in which to prepare and present for approval and filing, a bill of exceptions in said case, be, and the same is hereby further extended until the 30th day [fol. 25] of June, 1924, and that such bill of exceptions may be presented to the undersigned Judge of said Court wherever he may be at the time.

Granted in open Court, this June 16th, 1924.

Wm. H. Barrett, U. S. Judge.

IN UNITED STATES DISTRICT COURT

[Title omitted]

Bill of Exceptions

CAPTION

Be it Remembered, That the above stated case came on for trial, the Honorable William H. Barrett, Judge of said Court, presiding, at the December Adjourned Term 1923, to-wit: On February 27th, 1924. F. G. Boatright, United States Attorney, and Charles L. Redding, Assistant United States Attorney, appeared for the Government, and Franklin & Langdale, Branch & Snow, Wilson & Bennett and E. K. Wilcox appeared for the defendants.

[fol. 26] Upon arraignment, and before pleading to the merits, the defendants filed a demurrer to the indictment, and to the several counts therein, which, after argument was, upon consideration, overruled. To the order and judgment of the Court overruling said demurrer the defendants excepted, and their exception was duly noted and allowed.

After the demurrer was overruled, the defendants entered a plea of not guilty, and a jury having been duly empaneled, the following proceedings were had, to-wit:

S. J. HORNE, being first duly sworn as a witness for the Government, testified as follows:

By profession I am a veterinary, and my official position is that of inspector in charge of tick eradication in Georgia and Florida. I have not my commission with me. I have been employed by the Government since March, 1915. I am paid by the Department of Agriculture of the United States. I have the entire State of Georgia in charge, and my headquarters are in Atlanta. I was put in charge of the State in September, 1921, and have had connection with the work in Echols County, Georgia. In the Fall of 1921 there was not much of anything done. In the Spring of 1922 we started the construction of vats. There was a kind of campaign of education carried on there prior to the time I took charge of it. After I took charge, we sent men in there to locate vats at the places most suitable and desirable to them. We first sent Dr. Applewhite, and later

sent Mr. Jeter. They were instructed to visit the people. They were under my supervision, and I work under the supervision of the Chief of the Bureau of Animal Industry in Washington. The first [fol. 27] thing they were to do was to get the vats located and advise the people what was necessary to accomplish tick eradication, the dipping of cattle every fourteen days, under supervision, and for the employment and appointment of local men through the board of commissioners. By the words under supervision, I mean that the cattle shall be disinfected under the men directing the work. The actual work of dipping the cattle is accomplished by county and state inspectors, under the supervision of government inspectors. The Government men are not present at every dipping, but they are present at all they can get to. The purpose in having Government men present is to gain knowledge of what has been accomplished, so that the counties or areas doing systematic work can be released from quarantine. The Government men also supervise the mixing of the liquid; it is their duty to see that the vats are properly charged with an arsenical preparation approved by the Government. The purpose of dipping cattle is to eradicate ticks. Ticks are a parasite that transmits a disease known as splenetic or Texas fever. An investigation was made because of the fact that cattle movements from the southern states to the northern markets invariably brought on a disease among cattle in those states that they did not have except immediately following these cattle movement from the south. This investigation by the Bureau of Animal Industry disclosed that the tick was the cause, and at that time a quarantine was placed over all the territory where ticks lived,—a Federal quarantine prohibiting the movement of cattle from the infected area into a free area. The first work done in Echols County was the year prior to my being put in charge, and I did not attend any public gatherings [fol. 28] at all. In March, 1922, we had about 12 or 13 vats dynamited at one time in Echols County. That was after I took charge there. All the vats were dynamited except those on the Florida line. This was repeated in April, and in May we decided not to build any other vats but to use spray pens. These spray pens were burned, and we attempted to rebuild the vats in June. As fast as they were rebuilt, they were dynamited, and that took place up until July, 1922. These vats were four or five miles apart, and covered the county West of the Alapaha River. We started the work on the West side of Echols County so as to protect Lowndes County, and were never able to get across the river. As fast as we would build vats on the Lowndes County line, they would be destroyed. The vats that were built on the East side of the river were built by farmers themselves, and they were not dynamited up until June or July, 1922. Lowndes County had done eradication work for several years, and we started on the line of that county so as to protect them. From the time I took charge until July, 1922, there were probably 50 to 75 vats destroyed,—they were originally built, then rebuilt and then dynamited again.

Cross-examination:

It was in September, 1921, that I assumed control of Echols County, Georgia, so far as my department was concerned. Not all of the vats that were destroyed were constructed by the county authorities of Echols County, there were two or three that were constructed by private individuals. This county had been determined to be a tick infested area by my predecessor and had been quarantined against interstate movements of cattle prior to the time [fol. 29] I took charge. I took into Echols County early in August, 1922, all the employees of the Bureau of Animal Industry whose names are set out in the indictment except two. The work of tick eradication was not in progress at that time; an attempt had been made and vats had been constructed, but they were dynamited and there was none at that time. Some dipping had been done prior to that time. Some private vats had been constructed and some county vats as well. Lofton and Peterson, local parties, were employed, I think, some time in the early Spring of 1922 by the Bureau of Animal Industry. They were not on this job in August at all; they were range riders and guarding vats. After these other gentlemen came and the McKinnon vats could be constructed, they were in the discharge of duties as range riders in Echols County. These men did not gather up cattle so much as they did supervising and dipping and making inspection of the range to see that they had all been dipped. On these inspections of the range, if they found one that wasn't paint marked, it was driven up by them. As the cattle were dipped, they were marked with paint so as to distinguish between those that were dipped and those that were not. Seizure and impounding cattle was carried on in co-operation with the State Inspector when it was found that they had not been dipped. It was carried on in connection with the two.

Q. They did the actual work of seizure?

A. Yes, sir; they did assisting with the other. I judge that they also at times performed the duties of notifying the owners of the cattle when they were impounded. Probably one of these men, Wimberly, was also employed by the State up to November, 1922. English, Murphy, Counts, Howell, Richy and Lockridge held com- [fol. 30] missions from the State Veterinarian, but received no pay; they received their compensation from the United States Department of Agriculture. I think they received $1680.00 per annum. I do not know whether the commissions issued to these men by the Bureau of Animal Industry are in Court or not.

Redirect examination:

These Government men that I have referred to as being range riders were directed to make inspections as to whether or not all the cattle were being dipped, and at time they were engaged in superintending and dipping cattle. The state men went with them; it was the duty of the state men to drive up the cattle, if any one, in the event they saw tick infested cattle or cattle that had not been

dipped. The Government men were charged with that duty only in assisting the state men. The Federal Government does not get out any notices directing the dipping of cattle. I am not certain, but I think Mr. Jeter was commissioned by the State as well as by the government. He was acting for the state. He made the request that the State commission him in order that he could carry on the co-operative work. He had supervision of all the men, Government and State, in that particular county.

Recross-examination:

My instructions to these Bureau of Animal Industry men to discharge the duties of range riders in Echols County were based on instructions to me from the Bureau,—written instructions to me from the Chief of the Bureau. They were not instructed to act as range riders, they were agents, instructed to ride the range and in-
fol. 31] spect the cattle,—by instruction through a letter from the Washington office to my office. I have not the letter with me, it is in the files in Atlanta. I could not answer the question as to whether there is any rule, general or special, by the department to instruct these agents to do the work which I have described as a range rider. Those are the rules and regulations there (indicating). I do not know whether those are all the rules that have been promulgated by the Department or not.

T. H. Applewhite, being first duly sworn as a witness for the Government, testified as follows:

I am a veterinary, employed by the Bureau of Animal Industry of the Department of Agriculture, and am stationed at Valdosta. I am supervising Inspector of Tick Eradication, and as such have charge of the work in Echols County, Georgia. I have had charge here since the work started in the Spring of 1922. When I first went into Echols County, I found two vats there, if I remember right,—in the southwestern corner of the county. I noticed that approximately eight or ten vats had been destroyed. I do not recall how many vats have been destroyed since I went into the county, but several of them. At first we rebuilt several vats and they were destroyed, and then we built them again and they were destroyed. Because of this, we quit building them and went to spraying, fixing spraying pens and spraying the cattle, and when we did this, the spray pens were burned. I know just a few of the defendants in this case. I have never been present at any vat when any trouble occurred.

ol. 32] Cross-examination:

I understood the working of the State wide tick eradication Act 1918. When Dr. Bahnsen, under the provisions of that Act, called upon the county commissioners of Echols County to put on

the work there, a number of citizens of the county endeavored to get the commissioners not to undertake it. There was one meeting that I recall for that purpose before the Commissioners undertook to put on the work of tick eradication. In this meeting, I made a talk after Mr. Corbett did. In his talk to that gathering of people Mr. Corbett advocated tick eradication. In that talk, he said that he had been accused of blowing up vats, but, thank God, he was not accused of blowing them all up.—I don't remember that it was said in a jocular way. On one occasion when I met Mr. Carter in front of my house, I explained to him that the local inspectors superintended the dipping of cattle, and that it was his policy to paint mark all cattle going through the vats. That was my instructions. We usually ride the range for the first, second and third days after dipping, and we don't have much trouble about cattle licking the paint off, when it is put on. The only complaint Mr. Carter made on that occasion was about some cattle being taken up that had been dipped. The majority dipped all their cattle, all that we had a record of. After these men named in this indictment were sent there, Mr. Eugene Carter was one of the State employees there. His position was that of inspector and range rider. He supervised the dipping of cattle and rode the ranger after dipping days to ascertain whether or not all cattle had been dipped. John H. Touchstone was another state inspector there after August, 1922, and his duties were the same as Mr. Carter's. The duty of these gentlemen named and described in this indictment as employees [fol. 33] of the Bureau of Animal Industry was to assist the state employees in carrying on the work,—they all did practically the same thing, more or less. Mr. Eugene Carter did not stay in the camp with them all the time, but Mr. Touchstone did. These employees of the Bureau of Animal Industry did not as a rule actually assist the owners in dipping cattle when they were brought to the vats, but they did that occasionally. The people that brought the cattle would dip them, and the inspectors would do the inspecting and fixing the solution in the vats and the paint marks. The notices or orders to dip were served by the inspector, Mr. Jeter. The range riders impounded the cattle and was found on the range that did not bear paint marks. These range riders included the employees of the Bureau of Animal Industry and the state men.

Q. Did you state that the State men did the impounding?

A. Yes, and they were assisted by the Bureau men. I did not mean to say that Dr. Jeter served all the notices, neither did he sign them all. I am not in position to say who signed and served the others. I am not in position to tell you whether these inspectors employed by the Bureau of Animal Industry signed some of these notices and actually served them or not, because I never remember being along when the notices were served.

Redirect examination:

I do not know of any cattle going through the dipping pen in Echols County without being paint marked. It was in August, 1922,

we carried these men down there and established a camp, called Mc-
[fol. 34] Kinnon Camp where the men lived in tents. We put the vat in at that camp because we could not get the cattle disinfected any other way. The reason for that was because of the destruction of the vats we built, or the county built, and because all the spray pens which we constructed has been destroyed. This vat was built around 25 yards from where the men slept. Four men stayed awake at night in order to protect the dipping vat at Camp McKinnon. Sometimes when cattle were brought to the vats the State or Government men, or both, assisted in dipping. That was just the men's voluntary assistance. We conducted the work more as a co-operative business, and tried to do what we could, and in case of any gentleman having trouble with his cattle, we assisted him in rounding them up.

Peter F. Bahnsen, being first duly sworn as a witness for the Government, testified as follows:

I am State Veterinarian for the State of Georgia, and have been such since the creation of the office in 1910. As state veterinarian I entered into a contract with the Government in reference to tick eradication. This is the contract here (indicating). During the time since 1910, I have had occasion to do tick eradication work in Valdosta, or Lowndes County. My recollection is, we sent Mr. Owens to Lowndes County in 1915 to do some preliminary work, and afterwards two vats were built by private citizens near Valdosta. These were put in to give the people opportunity to dip their cattle and note the difference between cattle that were dipped and those that were not. At that time, 1916, we did not have a statewide tick eradication Act, but we undertook to get each board of com-
[fol. 35] missioners to co-operate in tick eradication work by telling them about it and trying to convince them that the work was worth while and would be a help in development of the cattle industry. We got the commissioners of Lowndes County to adopt tick eradication, and subsequently the county built quite a number of vats. The first Government inspector was placed in Lowndes County in 1916. The contract I referred to was entered into June 17, 1915, but we had a previous agreement between the Government and the commissioners of agriculture in 1906. To the best of my recollection, the first vat blowing took place in Lowndes County about 1917, after the state and government were co-operating in the work of tick eradication in Lowndes County. At one time, I employed Borah Corbett to prevent the blowing of dipping vats in Lowndes and Echols Counties, and none were blown for about a year after we hired him. After we discharged him, the vats were blown again. I met Mr. Hicks, one of the defendants, during the time of the General Assembly in 1922. Mr. Hicks was in Atlanta in interest of a Bill to repeal the statewide tick eradication act, and during that time we had quite a few talks. He was bitterly opposed to the tick eradication law and the dipping of cattle,—he stated that

tick eradication in Echols County was impossible and that the people were all against it; that even if they wanted it, it could not be done, and that they would not take up tick eradication work in Echols County whether the law was repealed or not. The Government men in this work are employed by the Government, and under the co-operative agreement they were also given a state commission, and the state men are employed by the State veterinarian, under the provisions of an Act of 1912. The county men are employed by [fol. 36] the county, or at their suggestion, and commissioned as required by law by the State Veterinarian. On behalf of the Government, the men employed in the work in Lowndes and Echols County were employed by Dr. Horne. In the employment of men, Dr. Horne and I work in close co-operative agreement.

Cross-examination:

In carrying on the tick eradication work in Echols county, we were proceeding under the state veterinarian act and other supplemental acts that preceded that. The act of 1918 provides that no regulations previously existing in reference to tick eradication shall be affected by the act, and it only repeals such parts of other acts as are in conflict with the act of 1918, and we were operating under that act and such other previous acts as were not superseded and repealed by it. This work was put on in Lowndes County in 1916 and has continued until the present day. The first vats were blown in Echols county about the middle of the year 1917. I can not state definitely just where the vats were blown in Lowndes County, but it is my impression that they were located on the Echols county line,—I don't know just exactly where all the vats were located, I could not state definitely. Vats were blown in other sections of the county. I could not tell you where the defendants all then lived. Mr. Hicks was in Atlanta some time during the session of the Legislature to which I have referred, several weeks. They were there in interest of a Bill to abolish tick eradication or to amend the law so as to exclude Echols and Clinch counties. There was just a difference of opinion between us, and were discussing the Echols County situations. There were from one to two state [fol. 37] employees in Echols county engaged in this work,—I don't recall that there were more than that except for the past year or two we have had more than that. Since August, 1922, we have had six or seven. I do not recall all of them, many of them I never knew. They were employed as cattle inspectors. Some of them discharged the duties of range riders and some were vat inspectors. When the work of tick eradication was first undertaken, we found it was impracticable to keep tab on cattle that had been dipped and those that had not been, and we had to devise a system in order to check up on these cattle, and after many trials we found that the only practical system was to mark the cattle that had been dipped. After adopting this system, we found that unless we provided ways and means for taking up cattle that had not been dipped, we could not keep up with it and clean up the territory. Then we devised a system of range riding, and these range riders

are required to get the cattle that are on the range that have not been paint marked and bring them to the vat for dipping purposes. These duties are discharged by all the inspectors. I could not say the exact number of government agents or employees of the Board of Animal Industry were kept in Echols County since August, 1922, but between 5 and 8 or 9. They discharged the same duties that my inspectors did.

OSCAR THOMPSON, being first duly sworn as a witness for the Government, testified as follows:

I am employed by the United States Department of Agriculture, Bureau of Animal Industry, and have been so employed for three [fol. 38] years in Lowndes and Echols Counties. I went to work in Lowndes County in July, 1922, and in Echols on May 15, 1923. During the time I was engaged in tick eradication work in Echols County, I was not working with employees of any other Sovereignty. The State of Georgia had employees there, and the Government employees and the State employees were co-operating together. The State employees worked under the supervision of the State Veterinarian. The State men had general direction of the work down there. The State men were supervising all the cattle we took up. The Government men were supervising the work. In August, 1922, Mr. Mann Carter came up to me and said they wasn't going to dip cattle in Echols. That was before I went to work in Echols. He said they had two telegrams from Col. Hicks that day, and they *was* going to build a fence around Echols. I asked him if he didn't think they ought to dip, and he said they *wasn't* going to dip any way.

Cross-examination:

That was during the time Mr. Hicks was in Atlanta trying to get a Bill passed exempting some portion of the law from Echols County. I understood that the telegrams and letter he claimed to have were encouraging. I do not know whether there was any such bill passed or not. He had a newspaper in his hand, but I did not read it. I don't know whether it contained anything about the proceedings of the Legislature or not, and Mr. Carter did not tell me. I don't think that it had passed the Lower House.

[fol. 39] W. D. COUNTS, being first duly sworn as a witness for the Government, testified as follows:

I have been employed by both the State and the Government. The Government paid my salary after the first two days I was employed. I was employed by the Government as an agent in tick eradication. My duties were to enforce the law. I was engaged in riding the range and looking after cattle which had not been dipped. I had occasion to visit Statenville, and while there I saw Mann Carter

and Will Carter several times. I had a difficulty with them on January 8, 1923. Will Carter approached me and asked why I had framed up against him on Christmas night, and I told him I had nothing to do with it. Jim Carter and Will Carter had had an argument at Mr. Eugene Carter's about a dog. I had been up the road and stopped there to get some gas. After I told him I had nothing to do with it, he then brought up about 17 head of cattle we had over at the camp at that time. I told him I was not in the bunch that had taken up the cattle and had nothing to do with it. He was using profanity all the time. Mr. Mann Carter came up and kept calling on his son Fred to get on me and beat me up. I tried to avoid a fight for at least ten minutes, and Will Carter came in and we had three or four licks, and the best I remember he got knocked down; and in the meantime Fred joined in from my back. Mann Carter was standing there all the time with his hands in his pocket; he said, "Get on him and beat him up." Both of them were on me and I was trying to keep them off for five minutes; then we circled around a truck there and Mr. Harris, another Government agent, got off the truck and was coming to where I was, and Mann Carter said [fol. 40] to him, "Get back, this is none of your affair." Then Fred walked up behind me and hit me back of the ear and everything went dark and I hardly remember anything else that happened. We had gone to Statenville that morning to get the mail and for Mr. Harris' trunk. It was not necessary that we get the mail that morning, but we got our official mail at Statenville at that time.

FRANK DANIELS, being first duly sworn as a witness for the Government, testified as follows:

In March, 1922, I passed the Liston Dipping Vat in Echols County. It was about sun down, and I saw Mann Carter, Will Carter, Borah Corbett, Dan Carter and George Herndon. They came there in a Ford car, and I guess they blowed it up,—they got out, and it was blowed up in just a few minutes. They went up to the vat, and then left right away. I could not tell what they were doing. I was about a hundred yards from the vat. I have no doubt as to the identity of these parties; I have been knowing them long enough to know them when I see them. I went up the road about two hundred yards and after it was blowed up I went back to see what had happened. I noticed the boards around the vat and when I first passed and they were all right, they were dry, and when I went back they were wet.

Cross-examination:

I was convicted in Dothan, Alabama, in September, 1922, for car stealing, and am now serving a sentence from five to ten years. [fol. 41] I was also convicted in Lowndes County one for burglary. I was indicted and convicted for hog stealing in Echols County. I ran away from the penitentiary and was a fugitive from justice from November, 1921, to September, 1922.

Redirect examination:

Lots of vats were blown up over there in the day time. I do not know whether as many were blown up in the day time as at night or not. I was an escaped convict at the time, but I was not afraid.

J. C. JETER, being first duly sworn as a witness for the Government, testified:

I am a Government employee, with the Bureau of Animal Industry. I have been at work in Echols County since April 19, 1922, as supervisor in charge of the work. My duties were to assist the state's men to enforce the law getting the cattle dipped. I saw to the cattle being summoned out and to the State and county men getting the cattle dipped. I would go to the vat and see that the cattle were dipped, just to see that it was done. It was a part of my duties. I went around to all the vats. I mixed and mingled with the people and talked with them and tried to get them to co-operate in cattle dipping. I know Mann Carter, Borah Corbett, the Thornton boys, the McDonald boys, Tinker Carroll, Dr. Prescott, Sheriff Pennington, Mr. Hicks, the other Mr. Corbett and Rader Carter and Wiley Corbett. I have talked with Mr. Mann Carter relative to cattle dipping and this law. The first talk that I recall was at the Smith Carter vat. Mr. Carter was summoned to bring his cattle to the Smith Carter vat and he didn't bring them; so I went to him and asked him if he was not going to bring his cattle; and he fol. 42] said he was not; that he was not going to dip a damn one until he had to. Mr. Hicks came to me at one time and wanted to know if he and Dr. Prescott could get on the Federal payroll as under cover men; they didn't want the people to know they had a place with the Government; and they said they could handle the situation and get the people to dip their cattle. I know where the Prine vat was. It was dynamited. There were some guards there at the Prine Vat and a bunch of fellows came up there and had some shooting, and two of the men came to me and told me about it. I went to Sheriff Pennington and told him we had trouble at the Prine vat and wanted him to go over and see if he could catch the people that were there and arrest them. He said his car was out of commission, and I finally told him I could carry him in my car and he agreed to go and we went over and of course the people had gone. Their cars had gone, and the Sheriff said he could not do any thing tracing up the cars, as there were so many cars alike. I insisted upon his trying, because one of the tires on the rear of one car was smooth and the other was a tread tire, but he would not go.

Cross-examination:

I do not think that Oscar Thornton, Shady Thornton, Inman Thornton, Waverly McDonald, Wesley McDonald or Tinker Carroll, who are defendants in this case, owned a cow. I held a commission

from the Bureau of Animal Industry and also from the state. I had charge of the officers that had charge of the serving of dipping notices. I did not always sign the notices,—they signed them themselves, the State and Federal men. I do not think those employees [fol. 43] whose names are set out in the indictment, such as Counts and Lockridge and Howell, signed and served notices for me,—they may have, they could have done it. The county men would sign them; the state men, such as Hammock, he was one of the inspectors. The inspectors employed by the county commissioners, with the approval of Dr. Bahsen, and these government men whose names are set out in this indictment, all performed the same duties. This batch of papers here are dipping notices signed and sent out by me. These notices were served by these Government men as well as by the State men. Similar notices were sent to cattle owners.

R. S. English, being first duly sworn as a witness for the Government, testified as follows:

I am an employee of the Government in the capacity of Agent, Tick Eradication, Bureau of Animal Industry. The camp known as Camp McKinnon was shot into in Echols County. There was seven or eight people in the camp, in tents, including myself. It was the latter part of August or first of September, 1922. The camp is located in the forks of the Statenville and Valdosta road and the Statenville and Lake Park road. The Lake Park road comes from the West and the Valdosta road from the North. On Sunday afternoon, the latter part of August or first of September, between sundown and dark, I was in the field just in the rear of the camp about one hundred yards, I suppose, in the rear of the tents. I heard a pistol shot down the Lake Park road, in the direction of Lake Park, and being Sunday it was something unusual to hear a shot on Sunday. I stopped to listen a few seconds and heard a car running, and in a few more seconds I heard people hollering. They came on down the road. When I first heard them I could not tell what they were [fol. 44] saying. That road comes about 200 yards south of the camp. When the car got opposite the camp, I could distinguish what was being said. There was hollering and cursing at the top of their voices. It seemed to be a Ford car, but I could not tell how many men were in it, it seemed to be full. From the sound of the voices, they were all hollering and screaming at the top of their voices and cursing and using profanity in regard to us. The cursing was being used directly in regard to we men in the camp; they said the "cow dipping bunch," and used profanity. The car continued down the road to where another little by-road crosses the Lake Park road and goes by the home of Barney Guest, about half mile below the camp. Afterwards the car came back by the camp, and when they returned by the camp they fired into the camp. I do not remember but two shots; after we returned the fire, I don't know how many they fired after that. The fire was in our direction, I heard the bullets. I have heard bullets before, in the war. They

struck the oaks in the camp. We were right among the oaks,—the camp was in an oak grove.

Cross-examination:

The Statenville and Lake Park road runs East and West, and these men approached from the West the first time. The first shot I heard, they were about a mile from the camp. They did not fire into the camp as they went East in the direction of Guest's house. When they first passed they disturbed nobody at the camp, except by what they said. I do not know how many men were in the car, or who fired the shots, or who they were. I am not sufficiently experienced to tell what sort of pistol it was. There were four men in the camp [fol. 45] that returned the fire, including myself; we were firing automatic rifles. We shot about forty times, or I did. I don't know how many times the other three shot. That was about 9 o'clock at night. We had a number of guns in the camp. We sometimes carried side arms, and sometimes shot guns. We carried them on the range when gathering cattle or inspecting cattle, and carried them to Statenville when we went there. We went to private homes to see about the discharge of our duties and to serve dipping notices, and when we did we carried side arms. My duties were simply as a range rider, to assist the state authorities in inspecting cattle on the range. I rode the range, inspected cattle and guarded dipping vats. I also served dipping notices. My purpose in inspecting cattle on the range was to see that they had been dipped.

Redirect examination:

The men were armed for self-protection. A number of things had occurred; vats had been dynamited, and there had been shooting at certain vats,—the Prine vat, I believe. We realized that our lives were in danger, from having heard threats gathered from different sources, and from hearing people talk. We understood that the people down in Echols county were bitterly opposed to dipping, and our lives would be in danger if we undertook tick eradication. No threats had been communicated directly to me.

Ben Bohannon, first being duly sworn as a witness for the Government, testified as follows:

I live down close to what was known as Camp McKinnon; it isn't far, two or three hundred yards, I think. I remember the occasion [fol. 46] when the camp was shot up, when there was shooting at the camp. I was coming across the road, down back of the camp. I heard the shooting, it went like pistol or rifle, I don't know which. I do not know where the shots came from, but it sounded like they came from the back seat of a car. Oscar Thornton, Inman Thornton, Shabie Thornton, Tinker Carroll, Wesley McDaniel and Waverly McDaniel were in the car. I don't know whether the name is M-

Daniel or McDonald,—they called them McDaniel. I have known them a good while, and those are the men, Wesley and Waverly McDonald. I know all of them, and they are the ones I have named. They were hollering and cussing in the car, going toward the camp. They went by the camp and then came back. I wasn't very far away from them. They were in an old Ford, with the top left back. Some of the Thorntons own such a car. The car went by the camp and later returned; I don't know how long it was gone, but not long.

Council Bohannon, being first duly sworn as a witness for the Government, testified as follows:

I am a son of Math Bohannon. I remember the time the shooting took place at the camp. I heard the car pass the first time, but I was too far away to see it. I could hear them, and could understand some of the cursing, and heard some pistol shots, but do not remember how many shots I heard. I could see a little of the car as it came back by the camp, and I could hear the hollering. I had just gone to bed, and I went to putting on my clothes, but they had passed [fol. 47] before I could see any thing but the light. The first shooting I heard as it came back was from the car, there was five shots fired together, and the only shooting I heard after that was from the camp. It seemed to me that the first shots were fired from a pistol.

Mrs. Laura Bohannon, being first duly sworn as a witness for the Government, testified as follows:

I am the wife of Math Bohannon, and live near Camp McKinnon. I remember the occasion of the shooting into the camp, and saw an automobile pass the house. Before the car came along I could hear the boys, and could hear what they said,—they were cursing. It sounded to me like they were cursing the boys at the camp. I estimated the profanity to be *might* bad, and I thought at the time it was some drunk folks. I heard a pistol or rifle shots, I don't know how many, but I counted five when they came along back. The best I could tell the car was full, but I was not close enough to tell who they were. I did not recognize any of them but the Thornton boys and Tinker Carroll, the others I did not know. I know the names of the Thornton boys, Shabie, Oscar and Inman and I did not really recognize them, but my husband did. I did recognize Shabie Thornton and Inman Thornton, and I had seen that car in their possession before. The five shots were fired as they came along back; that is the reason they shot from the camp. The shots from the car were fired first, I saw the flash of them. It was dark and I could not tell who fired the shots, but the best I could tell it was from the rear seat. Judging from the flash of the pistol, it was pointed as near toward the camp as it could.

[fol. 48] MATTHEW BOHANNON, being first duly sworn as a witness for the Government testified as follows:

I remember the occasion when camp McKinnon was shot up. I was looking at the firing from the car. When I first heard the car, it was coming from the direction of Lake Park and going toward Statenville. I judged it to be about a quarter of a mile away. There was a right smart hollering and cursing, like somebody might be drinking. I had started to look after my cows, and I stopped and saw them pass the road. I then went on and they overtook me near the camp. The fired the pistol back toward Lake Park, and then after they turned to go in the direction of Mr. Saul's, they fired a few more shots. After they had gone in the direction of his house, a car came back with the same kind of racket and cursing. I could not tell which one was cursing. They were cursing at the camp men. They went on to say they would shoot their lanterns out, and when they made that remark, one of the men from the camp said, "Why don't you do it?" When I first saw them, they were right at me, the car mighty near struck me as I turned out of the road for them. In that car there were the Thornton boys, two of Mr. McDonald's boys and one of the Carroll boys. Those are the six men I saw in the car.—Inman Thornton, Shabie Thornton, Oscar Thornton, Waverly McDonald, Wesley McDonald and Tinker Carroll. After they passed me and I recognized them, they went into the direction of Mr. Saul's and then they returned. As they came back, it was between eight and nine o'clock. I heard the same racket.—I do not say it was these same boys that came back, but it was the same kind of racket and abusing of the camp and threatening. They used the same kind of language coming back they did as they went by the first time. When they came along back, I [fol. 49] had just laid down, and I got up and went out on the shed, and I heard them cursing again and repeating that they would shoot their lights out, and then some one called from the camp and said, "Well why don't you do it?", and at that time the reports from the rifles and pistols commenced. The firing started from the automobile first, and to my best recollection there were four or five of these shots, and then right away the men at the camp began firing. I have talked with Wesley McDonald one time since then, and he said that the car was back-firing. He also said that the cranking lever would not stay in the car and that he had taken that out and put it in his pocket, and that was all that they had in the shape of a pistol. He told me that was what I heard, was the car back-firing. He said there was no pistol in the crowd.

Mrs. D. H. SAULS, being first duly sworn as a witness for the Government, testified as follows:

I know the Thorton boys, Waverly and Wesley McDonald and Tinker Carroll. I also recall the occasion where there was some shooting over at the McKinnon vat, they came to my house that night

the shooting was done, and Shabie asked me for a lantern to see how to drive home. I told him I didn't have one. Then Tinker Carroll said, "We will stop there at the camp and get one." And Shabie then pulled a bright pistol out of his pocket and said, "This will get us some lanterns and some tick men too." They remained at my house about an hour. I heard them shooting at the camp about 15 or 20 minutes after they left. I live about a mile from he camp. The time that elapsed between the time they left my house [fol. 50] and the time that I heard the shooting was sufficient for them to have traveled from my house to the camp site.

BARNEY GUEST, first duly sworn as a witness for the Government, testified as follows:

I live in Echols County, about three quarters of a mile from Camp McKinnon. I recall the occasion when the shooting at the camp took place. On that night I saw Oscar Thornton, Shabie Thornton, Inman Thornton, the two McDonald boys and Tinker Carroll. They were at my house I suppose something like an hour before the shooting. They came from toward the camp, and when they left they went in the direction of the camp. I heard some shooting after they left, and from the sound, it was somewhere around the camp. I also heard a shot or two before they got to my house; I heard one bullet hit a tree about two hundred yards from my house in a bay, but that was after they came to my house and a little after the shooting at the camp. I was at home at the time with my wife and baby and Lacy Ward and his wife. I know where Mr. and Mrs. Sauls live. These boys, when they left my house, went back toward the camp and then turned and came back by my house and went toward the Sauls home. They were gone in that direction a little while and then came back by my house. They first came to my house and stopped, then left and later came back by there going in the direction of Mr. Sauls'. The last time they passed my house they were going in the direction of the camp. During the time they were at my house I took them to be drinking. While they were there, Shabie said he wanted to talk to me and we walked around the house and he proposed to me to let's go up there and blow up that [fol. 51] vat. I said, "Shabie, don't do that, whatever you do, let that alone," and he said, "Well, let's go back in the house." He didn't say what vat he referred to, he just said, "that vat up there." I suppose it was ten or fifteen minutes after they passed my house the last time when I heard the shooting. When they were at my house, I did not see any weapons. I talked with all of them while they were at my house, but I did not get into any secret conversation with any but Shabie and Inman Thornton and Tinker Carroll, and that conversation was about blowing up the vat. Subsequent to the shooting at the vat, Mr. Bowen sent for these boys to go over to Statenville, and he talked with them and they came back. Later on I met Shabie Thornton here in town and he was telling me about it. I asked him what he told Mr. Bowen. He said, "We told

Mr. Bowen we were coming by there and the car was running in that sand bed and it got to backfiring and the camp men got to shooting at us." I asked him, "How come you to tell that?" He said, I don't know, we just told that." Later on I asked him again why he told Mr. Bowen that, and he said, "Well, we were advised to tell it that way." I asked him who advised him to tell that, and he would not tell me for some time, but later on he told me that Buck (Carter) and Mann (Carter) told them to tell it that way. Shabie Thornton and Oscar Thornton and Inman Thornton and Wesley McDonald and Waverly McDonald are cousins of my wife, and they were visitors at our house before and after the shooting.

Mrs. Barney Guest, being first duly sworn as a witness for the Government, testified as follows:

I am a cousin to the Thornton boys and the McDonald boys; [fol. 52] we are brothers and sisters children. I am related also to Tinker Carroll, but I don't know just what the relation is. Our relations are always friendly. I recall the occasion when the shooting took place at Camp McKinnon. I heard the shooting. These boys came to my house. I suppose it was just good dusk, and staid until somewhere between seven and eight o'clock. I suppose that dusk at that time of the year was between six and seven o'clock. They staid at my house something like an hour, or maybe a little more. Nothing was said about the camp or the men at the camp to me, nor in my presence. Shabie had two pistols, and Inman had one, but I don't know what kind they were. They took them out and showed them to us, and one of them said, "I have got a good gun," but there wasn't anything said about what they were going to do with them. When they first left there they went toward the camp, but they turned and came back by the house and went in the direction of Mr. Sauls. If they returned from that direction and passed my house again, I do not recollect it. I heard the shooting, and it was a right good while after they left my place. I could tell from where I was whether it was shotguns, pistols or rifles that were fired. These boys were driving an old Ford car. Before they got there, I heard some shooting, but I didn't hear any talking. No shooting was mentioned by them after they got there.

Jim Carter, being first duly sworn as a witness for the Government, testified:

I am twenty-three years old and have lived in Echols County practically all my life. Smith Carter is my Uncle, and I knew where the Smith Carter spray pen was. The pen was at his house in Echols county and was destroyed sometime in June, 1922. [fol. 53] Lamar Carter, Alphonso Carter, Rader Carter, Neely Hires and myself destroyed it. The reason I went, Neely Hires came by

with his wife and told me about it. I told him I didn't have anybody to stay with my wife, and he said he would bring his wife there to stay with her. He wanted me to go over there with him to tear up the spray pen; he said a crowd was going. He said his father-in-law, Buck Carter, sent him there. He said his father-in-law said they would go over there and tear up that spray pen, that that was the only way to get through with dipping. He came over and told me he wanted me to go, and said he would bring his wife to stay with my wife. After ten o'clock, after I had gone to bed, he came with Floyd and Rader, and also brought his wife to stay with my wife. We went over and destroyed Mr. Smith Carter's spray pen, and then went on down to the Dukes place and destroyed that one, and this little Dukes boy, I learned afterwards, came out and put out the fire the second time. There was Neely and Floyd and Rader and myself and Lamar and F. L. and Alphonso at that vat. Lamar Carter and Alphonso Carter are sons of Smith Carter. The spray pen was about two hundred yards from Smith Carter's house. It was destroyed about eleven or twelve o'clock at night. Neely or Floyd brought a kerosene can, and some of them poured kerosene on it. The first thing we did, we tore it down and then piled it in an old vat that had been blown up before then. Smith Carter's vat had been blown up twice before that, I think. After we piled it up, we poured kerosene on the spray pen and burned it up. After we destroyed this vat we then went to the Dukes vat, all of us except Lamar and Alphonso. We went through the same process there and set it on fire twice. I know Mann Carter, and I knew Max Lockridge. I was with Max Lockridge at Mann Carter's when he [fol. 54] penned up one of Carter's cows. My father had got hurt, and I was riding in his place. I think my father was with the State, he was an instructor. We penned up some cattle at Mann Carter's own vat, and he came up there and said he was going to turn out the cow. He said it had been dipped, that he dipped it himself. Max asked him not to turn it out, and he kept saying he was going to turn it out anyhow, that there was no law to make a man paint his cows, and it didn't make any difference whether it was painted or not. He also used some profanity to Mack, and he told us to go away from there and stay away, that he built that vat for himself and not the public. One of the cows had ticks on it. When they go through a vat, ticks will stay on them for a day or so and then drop off. He said he had dipped that cow about three days before that. We told him what the charges were for dipping it. The charges went to Echols County. We told him if he did not pay the charges we would take it to the camp. If he was armed at that time, I did not see it. I went to the camp to see Mr. Jeter and when I came back Max Lockridge had his horse tied across the road. At one time, I had a conversation with Mann Carter about dynamite. He told me the vats would be dynamited if they could get the dynamite. He told me that was why they were staying as long as they were, that they could not get the dynamite. When we were talking about the dynamite, he said he was going to Jacksonville to get a tire for his truck. He went to Jacksonville, and when he came

ack he was telling me about being in Jacksonville. Just a few days fter he returned from Jacksonville the vats were blown up. On ne occasion I heard Beaurie Corbett say that little mob, referring o the men at the camp, had their guns, but he said "We have got uns too, and we can shoot too." I can not remember just when that fol. 55] statement was made, whether it was before or after the hooting at the camp. I was convicted once in Statenville in a neat scrape they had over there. There were five of us jointly in- icted, and one has never been tried. One of those indicted is a de- endant in this case.

Mrs. W. T. Dukes, being first duly sworn as a witness for the Government, testified as follows:

I lived at one time in Echols County, and am the mother of Opal Dukes and R. T. Dukes. I recall when the spray pen, known as the Dukes spray pen, was set on fire. I had been sitting up with a sick aby, and the night of the fire I heard a racket down that way and e looked out and saw the fire. My little boy was asleep but I woke im up. I had him go with me down there, and we put the fire out. was then put on fire a second time and he and I went down there nd poured water on it and put it out. The spray pen was ot completely destroyed that night. I also recall once when the it was dynamited. When it was dynamited in the afternoon, two en drove up in an automobile. It has been dynamited three times, it only once in the day time. When it was dynamited in the fternoon, a car passed just in front of Mr. Carter. In his car was r. Mann Carter and his son, Will. The car didn't stop at the vat it just a minute, then they went on down the road to somewhere out where the camp was established, and then turned around and me back after the explosion. The explosion occurred in three or ur or five minutes after Mann Carter left the vat.

ol. 56] Cross-examination:

I knew Mr. Mann Carter before I married, if I have been in s company any since then I don't remember. I recognized him at afternoon as being the man that always drove the car they lled Mann Carters. Of my own knowledge, I could not say that knew him, and I don't know of my own knowledge who the other an in the car was. This occurred about June, 1922. It was fore R. S. English and the other guards employed at Camp Mc- nnon went down there.

Redirect examination:

According to the best of my recollection he (indicating Mann rter) reminds me more of that man I saw stop at the vat just fore the explosion than any one I see here.

OPAL DUKES, being first duly sworn as a witness for the Government, testified as follows:

I am nine years old. I go to Sunday-school and school and can read and write, and I know what it means to tell a story. I remember when the vat near my house was dynamited. I saw two men drive by there in a Ford car just before it was dynamited. I heard my brother say, "Look out, don't blow up that vat." I do not know Mann Carter or Will Carter. I would not know the men that were there that day if I were to see them. The car stopped at the vat, but the engine didn't stop, and the men got out. They just went to the vat and stayed a minute and then went back to the car. They went down the road to the McKinnon houses, and that was about the time the explosion went off, and then they turned [fol. 57] and came back and went in the same direction from which they had come. This happened in June, but I don't know what year.—it was not last Summer.

R. T. DUKES, being first duly sworn as a witness for the Government, testified as follows:

I recall the time when an effort was made to burn the spray pen at my house. I put the fire out twice. It was about ten o'clock at night, I suppose. The spray pen was about 75 yards from the house. I saw someone there the night I put the fire out, but I did not see but one person, and I did not recognize him. I know Mann Carter and Will Carter. The day the vat was destroyed at my house, I saw those two men. I saw them in a Ford car, with the top down. Mr. Mann Carter has a car like that. When I first saw them, the car had stopped at the vat. I was in the kitchen. The car stopped at the vat a minute or so, and the explosion must have occurred in about five minute after it left. I saw Mann and Will Carter after that they came back by the house. I was on the back porch and could see them. They went up the road and then turned around and came back by the house. It was about an hour by sun, I reckon, or a little later. It was good daylight. I saw these men in the car, but I did not see them get out; there was a corn field between me and them. I saw them stop at the vat, but I did not see them get out.

SMITH CARTER, being first duly sworn as a witness for the Government, testified:

I am the father of Alfonso, Lamar and F. L. Carter. There were [fol. 58] three dipping vats built on my property, and they were all blown up.—two at night and one in the day time. I also had one spray pen there. I had a conversation with Mr. Mann Carter prior to the building of this spray pen. He was over at my house at the time it was built. He does not live very far from me, and he

would be over there every morning when they were being built, and he would always tell me to not let us have spray pens built and not allow people to come in there and build any. He said, "If we don't get any pens and don't have any vats, we will not have to dip any cattle." He said "Echols county is broke, and she wont spend any money, and the Government won't spend a dollar here." He said, "We don't want these things built here, and if we all join together they will not be built, and all those that don't join, it will not be good for them." He said they would make it tough for them that didn't join in. I furnished some poles to the Government or state authorities for the purpose of building pens; I let Mr. Jeter have the poles. I had a conversation with Mr. Mann Carter, and he advised me not to let them have any poles at all. Mr. Carter always told me, "If you keep these vats all burned up and the spray pens burned, we won't have any dipping." When we were speaking about having the pens built, Mr. Carter advised me not to let them build them there, and he said "Just keep the vats and spray pens blowed up and there will be no dipping." I told him we could never do a thing like that, that there would be a hereafter to it. I said we could not keep all those vats and pens burned up. I said, "the Government will put detectives in here and tree the whole thing." He said, "We will get them, we will put them in the river and make cat fish bait out of them." I recall also a statement he made that "Buck Carter, Prescott and I can handle any thing that comes [fol. 59] in Echols County." Those spray pens were built in May or June, 1922. That was before these Government men were put at Camp McKinnon.

Cross-examination:

These conversations were before these Government men were down at Camp McKinnon. The vat on my premises was also blown before the Government went down there, that is, before Mr. English and the others at Camp McKinnon were sent there. My vat was burned also before that time.

J. ROLAND HAMMOCK, being first duly sworn as a witness for the Government, testified as follows.

I am now living at Manatee, Florida, but formerly lived in Echols County, Georgia, while in Echols County I farmed and worked for the State in the cattle dipping business. worked for the State for about 18 months. During at time, I saw Will Carter at various times and places. I aw him in a pasture on one occasion. Wimberly, one of the Govrnment men, and Max Lockridge, Roy Ritchie, and Henry T. owell were with me. We were holding up some cattle in the rner of a pasture and he came up there with his gun. Will rter came up and asked me, with an oath, what I was doing

there. I told him I was sitting there on the edge of the log; and he cursed me and told me *and told me* to get out. I told him I would get out. I was not armed at the time, and I could not say as to the other men, but I think they were. He said he didn't blame the other boys for what they were doing, but he did me. He said we had always been good friends and got along all right, and he [fol. 60] blamed me. I told him I would get out, and I did. I was scared. I had had dealings with Will Carter prior to that time with respect to the dipping of cattle. He said the people were bloodthirsty over it, and they were going to have it,—referring to the cattle dipping. Just a few minutes after Will made this statement to me, Max Lockridge and Ritchie came out of the pasture with a cow, and Will got in the gate. He said he was not going to stand for the cow to be taken off. He had his gun at the time. They carried the cow off.

JOHN LOFTON, JR., being first duly sworn as a witness for the Government, testified:

I am about 31 years of age, and have lived in Echols County three years. I know Dr. Prescott, Wiley Corbett, George Herndon, Rader Carter, Mann Carter, Will Carter, Frank Staten and Floyd Carter. I was employed by the State as a vat guard in Echols County. I guarded the Prine vat. I saw those men I have named at the Prine vat. I was guarding the vat at the time, and Frank Peterson was with me. This occurred at night, in the month of June, 1922, I think it was. On the occasion when I saw these men, I was standing at the back of the vat, outside the pen. I was guarding the vat to keep it from being blown up; the Smith Carter vat had been blown up that day, and two others were blown up that night. I was armed with a single barrel shot gun. These men came there in a Ford car and a Buick. The Buick had a spotlight on it, and I did not know of anybody else that had a Buick with a spotlight on it except Dr. Prescott. Mann Carter owned a Ford like [fol. 61] the one they came in. When these people came there that night, they passed right on by the vat about 50 yards, the Ford in front and the big car following. They stopped about 50 yards below the vat and began to get out of the cars. They came right on back to the vat. Some of them opened the gate to the pen, like they were going to put cattle in,—there are two gates, and they opened them both and some came in each way. When they came in they struck a match to light a fuse with. I could see them, and can name them every one. It was Wiley Corbett, George Herndon, Rader Carter, Floyd Carter, Mann Carter, Will Carter, Dr. Eck Prescott and Frank Staten. It was my duty to keep them from blowing up the vat, and when they undertook to light the fuse, I shot the man that was trying to get the dynamite lit. Frank Peterson, who was with me, shot twice, and I shot twice. Peterson took to the branch and carried off all the ammunition. The biggest part of those men ran off that was able; they did not blow up the vat.

The whole business that came down there were shooting also, with shot guns and pistols. They fired in every direction. The next morning there were six puddles of blood there. Every vat that had been put down had been dynamited before I went to work. Something like 80 or *80* had been dynamited.

Cross-examination:

Wiley Corbett is the man that struck the match, and he was in the act of firing the dynamite when I shot into him. These other men were standing right by him. At the time this shooting occurred these men whose names are set out in this indictment as working for the Government had not been sent to Echols County, [fol. 62] but they came right quick afterwards.

Eugene E. Carter, sworn as a witness for the Government, testified as follows:

On the occasion of the shooting at Camp McKinnon, I was at the camp and saw the car go by the first time. I heard the car coming and heard those in it cursing. I was not there when they came back by and shot into the camp. I did not know the car or the people, and could not swear who was in the car. Sometime in 1923 I talked with Mann Carter and Will Carter several times in reference to cattle dipping. They said if we could keep them from having any vats we would not have to dip. That was all that was talked about down in there about that time, in May or June, 1922, among all the people generally.

Cross-examination:

That started in there before the camp was put in; Mr. Jeter was there, but the camp was not there. There was not a vat blown in the county or a spray pen destroyed after these Government men were sent down there and placed at Camp McKinnon. After these Government men were sent down there, the vats that had been blown up previous to that were rebuilt, and others besides. Mr. Mann built one. I was a county inspector a while. I was a county inspector then, and I am commissioned now as state inspector. The shooting occurred at the Prine vat on June 17, 1922. The last disturbance they had was in the month of June, I think, but I don't know.

[fol. 63] Roy S. Richey, being first duly sworn as a witness for the Government, testified as follows:

I know Mann Carter and Will Carter. I was with Mack Lockridge on the day he was killed. I was wounded on that occasion, in the back, and on the arms and head. Mr. Lockridge and I had

started to the Corbett vat to dip some cattle that had been left out on dip day,—we were going to supervise the dipping of the cattle under the direction of Mr. Counts, who was in charge of the camp in Mr. Jeter's absence. Mr. Count was employed by the Government. On that morning, February 3rd, Counts gave Mr. Lockridge orders to go to Wiley Corbett's vat and dip some cattle that had been left out on dip day, and Lockridge asked me to go with him. We started off in a Ford, and as we started Counts told us to stop by Mann Carter's and notify him about a yearling that had been taken up the day before. We intended to stop by Carter's house, but we saw them on the left side of the road about seventy-five yards off. I got out of the car and told Lockridge to wait and I would notify them about the yearling. I did so, and turned back to go to the car, and he started to walking back toward the car with me, on my left side. Will Carter turned off down a little dim road, and Mann Carter walked with me back to the road. He walked to the edge of the road with me and stopped. The car was stopped in the middle of the road. Mann Carter and Will Carter had double barrel shotguns. I had a gun, but it was broke. Lockridge had a forty-five revolver, and was carrying it in a holster on his right side. Mann Carter came up to the edge of the main road, but Will had turned to the left, and I did [fol. 64] not notice where he was going. When I got back to the car Lockridge was lighting a cigarette, and said, "Richey, are you ready to go"? Lockridge and I turned and started around the car and had walked about ten steps back of the car and he was standing about the center of the road. I turned to get back in the car on the left side; I was driving. He was back of the car and was going to get in on the right side. Lockridge was about ten feet from the car, I suppose, and Mann Carter said, "You all going to turn that yearling out?", and Lockridge said, "No," and as he said that he started to turn and face him. He turned this way (indicating), and said "No" over his shoulder. Just as he said no, I heard the click of a gun, the hammer, and I looked around, and just as I looked he shot. I saw Mann Carter with his double barrel shot gun leveled on Lockridge and he fired just as I looked. Lockridge fell and kept twisting, and about the same time another shot came and some shot hit me in the left side. Mann Carter fired the first shot. Will Carter was off to our left, and I had not seen him since he turned off from us to go down that little dim road. I turned then and saw Will Carter with a shotgun leveled on me, and I ducked and run, but before I ran, I pulled this little thirty-two automatic and throwed it on Mann Carter, and as I did that Mann Carter shot at me, but he did not hit me. Then I ran around the front end of the car and into the woods away from them. Just as soon as I got out of the road Will Carter shot me in the back with a shotgun. I kept running along and looked back and I saw Mann Carter pulling his pistol,—he had his coat on and he was pulling at his coat or belt like he was trying to get a pistol out. I run on and he hit me with the pistol and it staggered me at the time. When the pistol hit me I turned to the right and [fol. 65] went into the pond to hide from them. I went on through the pond in the direction of Jim Carter's house, who lived about three quarters of a mile away. When I got there, I saw Everett and Jim

Carter and his wife. He hitched up his horse and carried me to the camp and sent for a doctor, and the doctor came and gave me something to ease my pain and sent me to the hospital. The doctor was Dr. Prescott, and he made an examination of my wounds and said I'd better go to the hospital. There was an X-ray picture made, and I would know it if I saw it again. The bullet wound is on the right side. When Mack Lockridge was shot, he was walking away from Mann Carter and as he turned to say no, he shot him, and he twisted like this (indicating) and fell on his face. Mack Lockridge was not seeking to shoot, and never did reach for his gun. "No" was all that he had said to Mann Carter or Will Carter. I pulled this little gun out and throwed it on him after he shot Lockridge, but I never did fire and Lockridge never did fire.

Cross-examination:

There were some ten or twelve Bureau of Animal Industry men employed at Cam McKinnon. We had forty-five revolvers, and also some riot guns. We had received instructions from Dr. Horne to use the guns only in self defense. I was discharging the duties of a range rider and on the occasion of trips on the range, we carried these revolvers. I do not know what Mann and Will Carter were doing out there in the woods, they had shotguns and a dog with them, a bird dog. Mr. Carter owns a farm in a southwesterly direction from where the killing occurred. I first saw Will Carter after the shooting [fol. 66] commenced about thirty or forty or fifty yards away, coming towards the car. The shots that struck me from the shot gun were bird shot, sixes or sevens. I was not looking at Will Carter when he shot, but he was the only one in that direction.

J. L. Giddens, being first duly sworn as a witness for the Government, testified as follows:

I am an undertaker, and I recall the occasion when Mack Lockridge was killed. I saw him afterwards, in my morgue room, on the table. I made an examination of the wounds. He was wounded three times, there were many shots that went square in the left shoulder, and the balance ranged from the throat to the corner of his left eye. He looked around with his eye open, because no shots went through the lid of his eye, and most of the load went in the corner of his mouth and his nose. There were a good many shots in his neck. The corner of his mouth was shot out and part of his tongue was off, and his teeth were shot out of the corner of his mouth. I judge those shots came from the rear,—from the left and rear,—it came from the direction of over his left shoulder. There were some shots in his right arm. He was also shot in the right side. He was also wounded right over the heart,—two times. There was a hole over his heart as large or larger than a silver dollar; you could see in the cavity without getting very close to it. In my opinion, this first shot would have killed a man. I am also of the opinion that the shot in his left breast would have killed him.

[fol. 67] EVERETT CARTER, being duly sworn as a witness for the Government, testified as follows:

I was among the first to get to Mack Lockridge after he was killed. There was nobody there but Max when we arrived. Mr. Counts and Mr. Herring went with me. I noticed Lockridge's revolver belt; the holster was pulled from under him and looked like it had been unloosened or unsnapped. There were two or three gun shells lying around there and gun wadding; and also three puddles of blood. There was a match box there, and some one had been striking matches. The match box was about half open, the best I remember. Some one had been smoking cigarettes there. I saw the paper from around it. I picked the paper up, and at the time I picked it up, it did not have any tobacco in it. I noticed blood on the match box.

OFFERS IN EVIDENCE

Here the Government introduced the following documentary evidence:

A contract or agreement entered into between A. D. Melvin, Chief of the Bureau of Animal Industry, U. S. Department of Agriculture, and Peter F. Bahnsen, State Veterinarian of Georgia, which said contract or agreement is in the words and figures following:

"Atlanta, Ga., June 17, 1915.

Memorandum of Understanding

Regarding eradication of the Cattle Tick in the State of Georgia by co-operation between the State Veterinarian of the State Department of Agriculture, and the Bureau of Animal Industry of the United States Department of Agriculture.

[fol. 68] I

The Bureau of Animal Industry of the United States Department of Agriculture agrees:

1. To detail a competent veterinary inspector, to be known as Inspector in charge to direct the tick eradication work.

2. To detail additional veterinary inspectors and agents in tick eradication to the extent of the means at hand and in proportion to the funds expended by the state for the employment of inspectors.

3. To pay the salaries of Bureau employees and such traveling expenses as are incurred under Bureau instructions and authorized by the fiscal regulations of the United States Department of Agriculture.

4. To furnish all necessary blank forms, except the state quarantine and permit blanks and poster notices adopted as official for the state.

II

The State Veterinarian of the State Department of Agriculture grees:

1. To appropriate or reserve for tick eradiction work for the cur-ent year $25,000.00.

2. To employ competent state inspectors to the extent of the means t hand to aid in this work.

3. To enforce state regulations governing the movement of cattle fol. 69] within the State, similar to the regulations of the United tates Department of Agriculture governing the interstate move-ent of cattle from the quarantined area.

4. To enforce measures authorized by law looking to the protection f tick eradication areas against the introduction of infection from ithout, and to quarantine and prohibit the intra-county movement f infected cattle within the eradication areas, except under condi-ons mutually agreed upon between the State and Federal authori-es.

5. To furnish the required official state quarantine and permit lanks, also copies of the state regulations for use in tick eradica-on work.

III

The State Veterinarian of the State Department of Agriculture d the Bureau of Animal Industry of the United States Depart-ent of Agriculture mutually agree:

1. That the work of tick eradication shall be co-operative in every rticular.

2. That the work shall be carried on in co-operation with the te official having jurisdiction over this work, who will be expected use his influence to harmonize the various state agencies and in recting the work to localities where the greatest good can be ac-mplished.

3. That the inspector in charge of the Bureau of Animal In-ol. 70] dustry will confer with the said State official and welcome y suggestions offered with a view of improving methods in the rk, but any suggested deviation or departure from the established actice of the Bureau of Animal Industry must have the approval the Chief of the Bureau of Animal Industry before being adopted.

4. That it shall be the aim of the Federal and State authorities select and employ as agents in tick eradication and local in-ctors only such men as are satifactory to both parties, and the vices of such employees shall not be discontinued by either party hout first consulting with the other.

5. That in order to avoid duplication of work and unnecessary re-

ports all Federal, State and County employees making inspections and supervising the disinfection of cattle shall render the monthly reports required by the Bureau of Animal Industry of the work, and shall furnish copies to the State office, if desired.

(Signed) A. D. Melvin, Chief of the Bureau of Animal Industry, U. S. Department of Agriculture. Peter F. Bahnsen, State Veterinarian, State Department of Agriculture.

Said contract, when offered in evidence, was objected to by counsel for the defendant upon the following grounds:

1. Because Peter F. Bahnsen, State Veterinarian, was not authorized under the law to make any such contract with the Chief of the Bureau of Animal Industry or with the Bureau of Animal Industry.

[fol. 71] 2. Because there is nothing in the indictment which charges that the work of tick eradication in Echols was proceeding at the time of the acts alleged to have been committed by the defendants under the Act of May 29, 1884, and there is nothing in the indictment which charges that there had been any contract or agreement between the State of Georgia or any authority of the State of Georgia and the Department of Agriculture of the United States.

3. Because the Department of Agriculture had no authority under the law to make such a contract, and because the employees of the Bureau of Animal Industry were not authorized under the law to perform the duties set forth in the contract, even if it was made as appears from the memorandum of agreement offered.

Upon consideration, the Court overruled said objections, upon each and every ground, and admitted the contract in evidence. To said ruling the defendants asked that an exception be noted, and the same was noted and allowed.

Here the Government introduced the following documentary evidence:

A true bill of indictment returned by the Grand Jury of Echols County, Georgia, on September 12, 1922, charging J. C. Geter with the offense of a misdemeanor, in that he did carry a concealed pistol on September 11, 1922 in said county, and in that he did carry said pistol to a Court of justice then in session, and in that he did carry said pistol without first having obtained a license so to do.

[fol. 72] A true bill of indictment returned by the Grand Jury of Echols County, Georgia, on September 12, 1922, charging H. J. Murphy with the offense of a misdemeanor, in that he did carry a pistol on his person without having taken out a license so to do.

A true bill of indictment returned by the Grand Jury of Echols County, Georgia, on September 12, 1922, charging T. H. Applewhite with the offense of a misdemeanor, in that he did carry a concealed pistol on his person on September 11, 1922, and in that he did carry said pistol without first having obtained a license so to do.

A true bill of indictment returned by the Grand Jury of Echols

County, Georgia, on September 12, 1922, charging Lon Archer, Max Lockridge and W. D. Counts with the offense of a misdemeanor, in that they did unlawfully arrest and detain one J. H. Howell on September 1, 1922, without any warrant or other process authorizing them so to do.

A true bill of indictment returned by the Grand Jury of Echols County, Georgia, on September 12, 1922, against T. H. Applewhite, in which said T. H. Applewhite was charged with the offense of a misdemeanor in that he did unlawfully carry a pistol both to and while at a Court of justice in said county on September 1922.

Also a true bill of indictment returned by the Grand Jury of Echols County, Georgia, on September 12, 1922, charging J. C. Peter with the offense of a misdemeanor, in that he did carry a concealed pistol in said county on September 11, 1922, and in that he did carry said pistol on his person without first having obtained license so to do.

Also B. A. I. Order No. 215 issued June 15, 1916 by the U. S. Department of Agriculture, Bureau of Animal Industry, entitled
[Vol. 73] "Regulations Governing the Interstate Movement of Live Stock," effective on and after July 1, 1915.

Also B. A. I. Order No. 235, issued by the U. S. Department of Agriculture, Bureau of Animal Industry, entitled "Rule 1, Revision 5.—To prevent the spread of Splenatic, Southern or Texas Fever Cattle," effective on and after December 1, 1917.

Also B. A. I. order No. 252, issued by the U. S. Department of Agriculture, Bureau of Animal Industry, entitled "Rule 1, Revision 7.—To prevent the spread of Splenetic, Southern, or Texas Fever Cattle," effective on and after December 1, 1918, and amendments numbered 1, 2, 3, 4, 5, 6 and 7 thereof.

Also B. A. I. Order No. 263 issued by the U. S. Department of Agriculture, Bureau of Animal Industry, entitled "Regulations Governing the interstate Movement of Live Stock," effective on and after July 1, 1919, and amendments numbered 1, 2 and 3 thereof.

Also B. A. I. Order No. 269, issued by the U. S. Department of Agriculture, Bureau of Animal Industry, entitled "Rule 1, Revision 8.—To prevent the spread of Splenetic, Southern or Texas Fever Cattle," effective on and after December 1, 1919, and amendments numbered 1 and 2 thereof.

Also B. A. I. Order No. 271, issued by the U. S. Department of Agriculture, Bureau of Animal Industry, entitled "Rule 1, Revision 9.—To prevent the spread of Splenetic, Southern or Texas Fever, in Cattle," effective on and after December 1, 1920, and amendments numbered 1 and 2 thereof.

Also B. A. I. Order No. 273, issued by the U. S. Department of Agriculture, Bureau of Animal Industry, entitled "Regulations Governing the Interstate Movement of Live Stock," effective on and after July 1, 1921.

[Vol. 74] Also B. A. I. Order No. 275, issued by the U. S. Department of Agriculture, Bureau of Animal Industry, entitled "Rule 1,

Revision 20,—To prevent the spread of Splenetic, Southern or Texas Fever in Cattle," effective on and after December 10, 1921.

Also B. A. I. Order No. 279, issued by the U. S. Department of Agriculture, Bureau of Animal Industry, entitled "Rule 1, Revision 21.—To prevent the spread of Splenetic, Southern or Texas Fever in Cattle," effective on and after December 10, 1922.

Also B. A. I. Order No. 285, issued by the U. S. Department of Agriculture, Bureau of Animal Industry, entitled "Rule 1, Revision 22.—To prevent the spread of Splenetic, Southern or Texas Fever in Cattle, effective on and after December 31, 1923.

It was here admitted by counsel for the defendants that during the time that each and all of the above named orders were in force, Echols County, Georgia, was within the area quarantined because of the existence of Splenetic, Southern or Texas Fever among cattle and other live stock.

Here the Government introduced the following documentary evidence:

A certified copy of the appointment by the United States Department of Agriculture of Roy. S. Ritchey to the position of Agent in Tick Eradication, dated July 24, 1922. Said appointment is in the words and figures following:

[fol. 75] "United States Department of Agriculture, Office of the Appointment Clerk, Washington, D. C.

July 24, 1922.

(Caution: This letter, while evidencing an appointment as of the date thereof, is not to be accepted as a credential for operating. Any person approached by the holder is entitled, on demand, to view his regular departmental credential in the form of a badge or a current identification card.)

Mr. Roy S. Ritchey, Bureau of Animal Industry.

Sir: You are hereby notified that you have been appointed to the position of Agent in Tick Eradication on the miscellaneous roll of the Bureau of Animal Industry, at a salary of $1,680 per annum, effective July 30, 1922. You are required to furnish a saddle horse and equipment and to use the same in your official work, without expense to the Department. You are required to take the oath of office immediately, and fill out the personal statement sheet, inclosed herewith, and return the same (through the Chief of Bureau) to the Appointment Clerk. You will report for duty in writing to Dr. Sim J. Horne, Atlanta, Georgia, for assignment to an official station.

By direction of the Secretary of Agriculture.

Respectfully (Signed) P. L. Gladmon, Chief Personnel Officer.

Legal Residence: Georgia.
C. S. Authority."

[fol. 76] Also certified copies of the appointments by the United States Department of Agriculture of Lon L. Archer, and others, to the position of Agent in Tick Eradication, which said appointments are in the same form and of the same tenor and effect as that of Roy S. Ritchey set out next above. Said appointments being of the following named parties and are of the dates set opposite each name, respectively:

Lon L. Archer	July 24, 1922
Robert S. English	Aug. 7, 1922
Hillary J. Murphy	July 24, 1922
Max C. Lockridge	July 28, 1922
Demer Counts	July 24, 1922
Robert Bragg Thompson	Feb. 20, 1922
Joe Pate Wimberly	Oct. 23, 1922
James C. Jeter	Apr. 22, 1922

Also certified copy of the appointment of Dr. Sim J. Horne, by the Department of Agriculture, to the position of Veterinary Inspector, dated March 23, 1915. Said appointment is in the words and figures — follows:

"United States Department of Agriculture, Office of the Appointment Clerk, Washington, D. C.

March 23, 1915.

Mr. Sim J. Horne, Bureau of Animal Industry.

SIR: You are hereby notified that you have been appointed for a probationary period of six months, to the position of Veterinary Inspector, on the miscellaneous rolls of the Bureau of Animal Industry, [fol. 77] at a salary of $1,400 per annum, effective March 25, 1915. Retention in the service after the expiration of your probationary period shall be equivalent to absolute appointment. You are required to take the oath of office immediately, and fill out the personal statement sheet, inclosed herewith, and return the same (through the Chief of Bureau) to the Appointment Clerk. You will report for duty in person to Dr. W. N. Neil, Chicago, Illinois.

By direction of the Secretary of Agriculture:

Respectfully (Signed) R. W. Roberts, Appointment Clerk.

Legal Residence: Mississippi.
Certificate No. 11359, dated March 10, 1915."

Also certified copy of the appointment by the United States Department of Agriculture of Thomas H. Applewhite, to the position of Veterinary Inspector, which said appointment is in the same form and of the same tenor and effect as that of Dr. Sim J. Horne set out next above. Said appointment being dated March 29, 1915.

Here the Government introduced the following documentary evidence:

Revised Regulations for the Control and Suppression of Infectious and Contagious Diseases of Live Stock, promulgated by the State Veterinarian of the State of Georgia under authority conferred by the Acts of the General Assembly of Georgia approved August 15, 1910, and approved by the Commissioner of Agriculture of said State, [fol. 78] effective on and after February 1st, 1920. Said regulations are in words and figures following:

"Regulations for the Control and Suppression of Infectious and Contagious Diseases of Live Stock

Regulation No. 1

Paragraph 1. No animal affected with any infectious, contagious or communicable disease shall be permitted upon any public highway, open range or upon public grounds; nor shall they be allowed to feed in public places, or water at public fountains.

Paragraph 2. Every licensed Veterinarian or county and city health officer who has knowledge of the existence of any infectious and contagious disease of live stock shall report same to the State Veterinarian. Such reports should embrace a short sketch of the outbreak, including symptoms, number affected, number of animals dead, location of premises and name of owner.

Regulations Covering Quarantine, Inspection, Disinfection, and Movement of Cattle in the State of Georgia, Infested with or Exposed to the Cattle Fever Tick (Margaropus Annaulatus), which Transmits Splenetic, Southern or Texas Fever in Cattle.

Regulation No. 2

Paragraph 1. There are no restrictions against intrastate movement of cattle originating in area released from State and Federal quarantine, provided such cattle are not under local farm quarantine; [fol. 79] and provided further that as soon as cattle moving or drifting from the free acre enter the quarantined acre, they are immediately and automatically quarantined and must, thereafter, move as specifically provided for in these regulations.

Paragraph 2. Cattle shipments originating at points in area released from State and Federal quarantine may move without restriction to any point within the State of Georgia, provided no part of the shipment originates on a farm held under local quarantine. Should a shipment from the released area, while in transit, be unloaded at any point in the quarantined area such shipment must, thereafter, be handled as provided for in paragraph 3 or regulation five.

Regulation No. 3

Paragraph 1. Upon establishing the work of cattle tick eradication along approved, systematic lines, in any county, there shall be due

and sufficient public notice given by the use of posters at the Court house and along the county line or public highways entering the county.

Paragraph 2. In stock law counties. There shall be as soon as practical a systematic, farm to farm inspection of all cattle by cattle inspectors, regularly appointed and commissioned by the State Veterinarian. When cattle, even one or more animals in a herd, are found to be infected with or exposed to the fever tick (Margaropus Annulatus), the owner or keeper of said cattle and premises shall be served with official notice of quarantine by the cattle inspector, and instructed when and where to dip his cattle.

[fol. 80] Paragraph 3. In open range counties, all cattle are exposed to tick infestation and must therefore be regularly disinfected by the owner until tick eradication is completed and dipping discontinued in the county.

Individual milk cows that are free from tick and never permitted to leave the owners lot may, at the discretion of the Supervising Inspector, be exempted after 2 or 3 dippings.

Paragraph 4. Cattle infested with or exposed to the cattle fever tick (Margaropus Annulatus) shall not be driven, transported or allowed to stray over or upon public highways, commons or ranges. Such cattle, under direction and supervision of the State Veterinarian or regularly appointed and commissioned cattle inspectors, may be moved to a place within the county for proper and approved disinfection.

Paragraph 5. When an owner or keeper of cattle and premises is served with official notice of quarantine said cattle shall be properly and thoroughly disinfected by him, regularly ever fourteen days, until such time as it is ascertained by regular official inspection that the cattle and premises are free of ticks. See Sec. 4, Acts 1918.

Paragraph 6. Owners or keepers of cattle that have been officially quarantined and have followed all instructions with reference to freeing their cattle and premises of ticks, may move cattle from or onto such quarantined premises upon inspection and written permission by a regularly appointed and commissioned cattle inspector. No permit can be issued for movement of cattle infested with ticks.

[fol. 81] Paragraph 7. Request from the owner or keeper of cattle of a desire to move cattle, from or onto quarantined premises, shall be given sufficient time in advance for the inspector to make a personal inspection of the animals.

Regulation No. 4

Paragraph 1. The only recognized materials and methods for disinfection of cattle to destroy cattle fever ticks are as follows: The standard arsenical solution, or approved arsenical preparations which conform to the arsenical test adopted by the United States

Bureau of Animal Industry when used in an approved dipping vat or otherwise applied in a manner approved by the State Veterinarian, under the supervision of a State cattle Inspector. Owners or keepers of cattle are required, upon notice, to have their cattle on hand at the local established dipping vat or other recognized place for disinfecting properly and regularly in a manner satisfactory to the State Veterinarian. (Owners and keepers of cattle are required to handle and disinfect their own cattle under official supervision.)

Paragraph 2. When conditions exist to warrant removal of cattle or other live stock from infested lots, pastures or ranges, the owners or keepers of cattle, live stock and premises shall, upon written notice from the State Veterinarian, or cattle inspector, immediately remove same in the manner and methods prescribed by the State Veterinarian under official supervision. The infested lots, pastures or ranges to remain vacant for a sufficient time to allow such premises or ranges to be freed of tick infestation.

[fol. 82] Regulation No. 5

Paragraph 1. Cattle originating within counties in which the work of tick eradication is established may be shipped into counties released from State and Federal quarantine or into counties where the work of tick eradication is established, provided such cattle have been inspected and dipped under the supervision of the State Veterinarian, or a regularly appointed and commissioned cattle inspector prior to shipment. Said cattle inspector shall issue a written permit for the movement of such cattle, same to be attached to way-bill and accompany shipment to destination. Railroad pens, lots and chutes, including the cars or boats used, shall be cleaned and disinfected under official supervision before receiving the cattle for shipment.

Paragraph 2. Cattle may be moved from counties in which the work of tick eradication is established into counties released from State and Federal Quarantine, or into other counties in which the work of tick eradication is established via public highways, upon official inspection and written permission, if such highways lead direct into counties released from State and Federal quarantine, provided movement is made without passing through a quarantine county or part thereof, where the work of tick eradication is not established.

Paragraph 3. Should it become necessary in case of emergency, to unload cattle moving under the provision of this regulation in a quarantined county, where the work of tick eradication is not in progress, then the State Veterinarian or a regularly appointed and commissioned cattle inspector shall be notified. Said cattle shall not move [fol. 83] to destination except upon the regulation governing the transportation of cattle from quarantined counties in which the work of tick eradication is not established.

Regulation No. 6

Paragraph 1. Cattle of the quarantined counties, in which the work of tick eradication is not established, may be driven or transported into counties where the work of tick eradication is established, provided the cattle are inspected, found free of ticks and dipped under the supervision of the State Veterinarian, or a regularly appointed and commissioned cattle inspector. An official permit shall be issued to accompany the movement to destination.

Paragraph 2. Notice of a desire to move cattle under this regulation, shall be given a sufficient time in advance to inspect, disinfect, permit and direct the movement. Clean and disinfected cars or boats shall be provided if shipped.

Regulation No. 7

Paragraph 1. Cattle of quarantinued counties in which the work of tick eradication has not been established, may be moved into counties released from State and Federal quarantine, provided such cattle upon inspection are apparently free of ticks and are dipped once in a standard arsenical solution, at a recognized official dipping station, under the supervision of the State Veterinarian or a regularly appointed and commissioned cattle inspector before en- [fol. 84] tering such released counties. The cattle shall move within 12 hours after dipping, without exposure to infestation en route to loading point or destination, if driven; if shipped, such official permit shall be attached to the way-bill and accompany same to destination. If upon inspection the cattle are found infested with the cattle fever tick they shall be quarantined and dipped twice, ten to twelve days apart, before moving to destination.

Paragraph 2. Cattle moving under provision of paragraph 1 of this regulation shall, after final dipping, if shipped, be loaded through cleaned and disinfected pens and chutes into cleaned and disinfected cars or boats, which have been cleaned and disinfected under official supervision, and move within twenty-four hours after final dipping.

Regulation No. 8

Paragraph 1. Cattle originating in the counties in which the work of tick eradication is established, if not under local quarantine, may move into a quarantined county where the work of tick eradication is not established without official inspection and permission, provided the movement is made directly into the county to which such cattle are destined without passing through a county released from State and Federal quarantine, or through a county in which the work of tick eradication is established.

Regulation No. 9

Paragraph 1. The chiefs or heads of divisions of transportation [fol. 85] companies doing business within the state will be notified (by mail) by the State Veterinarian of the establishment of quarantine regulations governing the transportation of cattle; also of all changes or amendments to such quarantine regulations.

Regulation No. 10

Paragraph 1. No cattle shall be accepted by any transportation company in the State of Georgia unless such cattle are free of ticks. The movement of cattle infested with the cattle fever tick (Margaropus Annulatus) into, within or through the State of Georgia, at any time or for any purpose is prohibited by the laws of the State of Georgia. (See Sec. 1, Acts of 1918, page 256.)

Paragraph 2. The owner or authorized agent of owner of cattle desiring to ship cattle from the quarantined area in which tick eradication is not in progress, must file, in duplicate, with agent of transportation company at the time of delivery of said shipment an affidavit sworn to before some officer authorized by law to administer an oath, deposing that he has carefully examined the cattle and found them free of ticks. The agent at the point of origin must attach the original affidavit to the way-bill, which must accompany the cattle to destination, and must immediately send the duplicate of the affidavit to the office of the state veterinarian, State Capitol, Atlanta, Georgia. The agent at destination of shipment shall mark the date of delivery of such shipment on the original affidavit and mail same to the State Veterinarian, State Capitol, Atlanta, Georgia, without delay.

Note provisions of paragraph, 7 to 9 incl.

[fol. 86] Paragraph 3. The following shall be the only form recognized and accepted by the State Veterinarian:

——, Ga., —— —, 192-

I, —— ——, under oath, declare that I have carefully inspected and disinfected the following described cattle, complying with the provisions of the law regulating the suppression and control of infectious and contagious diseases of live stock in the State of Georgia, the provisions of the special Act of 1918 prohibiting the movement of tick infested cattle, and the supplemental regulations issued for this purpose by the Department of Agriculture, and offer them for shipment from ——, in —— county, State of Georgia, to —— in —— county, State of Georgia, via ——. Describe the cattle here: ——. These cattle are free of ticks. Should they, upon inspection while in transit, be found infested with ticks, I agree to pay all costs incident to feeding and disinfecting while these cattle are held in quarantine, the cost to be a bona fide lien

upon these cattle, which shall be paid before cattle are delivered at destination.

—— ——, Owner or Authorized Agent of Owned. (State which.)

Sworn to and subscribed before me. —— ——, N. P
(State title of officer taking oath.)

[fol. 87] Paragraph 4. Transportation companies, failing to secure from owner, or agent of owner, of said cattle such affidavit in duplicate, or failing to promptly transmit same, as herein provided, to the office of the State Veterinarian, shall be jointly or individually responsible for any cost of feeding, disinfection and delay incident to quarantine restrictions and subject to prosecution, should such cattle be found infested with ticks upon official inspection by the State Veterinarian or regularly appointed and commissioned cattle inspector of the State of Georgia.

Paragraph 5. All cattle in the hands of transportation companies within the State of Georgia are subject to inspection at any point by the State Veterinarian or any regularly appointed and commissioned cattle inspector of the State of Georgia. Should any such cattle upon inspection be found infested with ticks (Margaropus Annulatus) they will be held in quarantine not less than ten days, until they are properly disinfected twice at the risk and expense of the owner of such cattle or of the transportation company as hereinbefore provided. And the owner, shipper or transportation company will be prosecuted as provided by law.

Paragraph 6. Cattle quarantined within the State of Georgia under the provisions of Regulation No. 10, shall be disinfected in one of the arsenical solutions named in paragraph 3 of Regulation No. 12. Following the first disinfection, they shall be held in quarantine not less than ten days, when they shall be again disinfected with, or in, the officially recognized arsenical solution.

[fol. 88] Paragraph 7. The cattle shipper's affidavit as provided in this regulation shall apply only in the transportation of cattle from one point to another in quarantined counties, where the work of tick eradication has not been established, except as hereinafter provided.

Paragraph 8. Transportation of cattle under shippers affidavit as provided for in this regulation may be made to public stock yards and market centers in counties where the work of tick eradication is established, or into counties released from State and Federal quarantine, for immediate slaughter or other purposes, provided the proprietors or owners of such stock yards or market centers make application in witing, to the State Veterinarian for his approval, and provided they equip and set aside separate pens and chutes and alleys (same to be equipped according to requirements of the regulations of the United States Bureau of Animal Industry for receipt and disposition of cattle of the area quarantined on account of Splenetic fever in cattle), for the purpose of handling and disposing of cattle shipped under this regulation.

To avoid errors in placing cars at proper chutes agents are requested to write the name of the county in which shipment originates on the way-bill and to make the car containing such shipment: 'To be unloaded in quarantine pen'.

Paragraph 9. Transportation companies must require an official permit, in lieu of the affidavit hereinbefore mentioned, from any point within the quarantined area in counties in which the work of tick eradication is established and in progress under state and federal supervision.

[fol. 89] Regulation No. 11

Paragraph 1. Cars or boats which have carried cattle of the quarantined area shall be cleaned and disinfected according to provisions of these regulations immediately after unloading and before such cars or boats enter the area released from State and Federal Quarantine. Manure and litter from quarantined pens or from the area quarantined for splenetic fever in cattle shall not be released from State and Federal quarantine, unless same is disinfected or otherwise handled and disposed of under direction of the State Veterinarian.

Paragraph 2. Methods and material recognized for disinfection are as follows: Remove all litter and loose material, then saturate the interior surfaces of cars, boats or other vehicles, including floors, walls and doors, grounds and fences of lots, yards, chutes or other premises, with a five per cent solution of pure carbolic acid, cresole compound U. S. P. or some other recognized saponified cresol solution, four ounces to each gallon of water, with sufficient lime to show where it has been applied. Pens, chutes and alley-ways may be disinfected with double-strength Standard Arsenical solution.

Regulation No. 12

Paragraph 1. Any person, firm, corporation, transportation or other company, who violates these regulations governing quarantine, inspection, disinfection and movement of cattle infected with, or exposed to, splenetic fever infection, transmitted by the cattle fever tick (Margaropus Annulatus) will be prosecuted. See Acts of 1918 H. B. 397.

[fol. 90] Paragraph 2. Cattle moved in violation of these regulations shall be held in quarantine and disinfected according to the prescribed methods at risk and expense of owner or transportation company, as the case may be, and may be ordered returned to point of origin at the discretion of the State Veterinarian.

Paragraph 3. The only disinfectants recognized for disinfection of cattle in suppressing the spread of splenetic fever in cattle and the eradication of the cattle tick are as follows:

1. Standard arsenical boiled dip; the stock solution being diluted with nine (9) times its bulk in cold water.

2. Standard arsenical self boiled dip (known as S. B. Dip); the stock solution to be diluted with not more than one hundred and twenty (124) or less than ninety-nine (99) times its bulk in cold water.

3. Proprietary arsenical dips recognized by the U. S. Bureau of Animal Industry, to be used in dilutions prescribed on the label.

Regulation No. 13

Paragraph 1. Horses, mules and asses found infested with the cattle fever tick (Margaropus Annulatus) are subject to the provisions of these regulations.

Regulation No. 14

Paragraph 1. In construing Special Orders, as well as regulations promulgated by the State Veterinarian and approved by the Com- [fol. 91] missioner of Agriculture, the term "cattle" shall embrace bulls, oxen, steers, cows, heifers and calves.

Regulation No. 15

Paragraph 1. Cattle Inspectors are not allowed to charge or accept a fee of any kind from the public for the performance of their regular official duties.

The Government rested.

The Government having rested, the defendants introduced the following evidence:

Jesse Peterson, being first duly sworn as a witness for the defendants, testified:

Direct examination:

I live in Echols County and have lived there practically all my life. I raise cattle and farm, and I inspect the dipping of cattle down there. I know Jim Carter, and have known him since he was small. I know his general reputation in the community where he lives, and from the reputation I would not believe him on his oath.

Cross-examination:

I was formerly a representative in the Legislature from Echols County, and was very active in an effort toward repealing the cattle [fol. 92] dipping law. I really was interested in a Bill to leave it optional with the southern counties of the State as to whether they dipped their cattle or not. I had several conversations with Governor Hardwick, and at one time with the Governor and Mr. Bahnsen, the

State Veterinarian. At this conference the Governor told Mr. Bahnsen to get two men, ex-soldiers, and machine guns. I did not see them with any machine guns or arms prior to that time, but I did after that time. It was at this conference I spoke of that the Governor told Mr. Bahnsen to get two machine guns and some ex-soldiers and install them in Echols County.

The defendants thereupon introduced the following documentary evidence:

A dipping notice, directed to and served upon D. D. Daniels of Statenville, Ga., and signed by J. C. Jeter, Cattle Inspector, dated August 23, 1922, which notice is in the words and figures following:

"State of Georgia, Department of Agriculture, Bureau of Live Stock Industry

Dipping Notice. Original No. 79349

County: Echols.
Address: Statenville, Ga.

Mr. D. D. Daniels:

Complying with the provisions of Section 4 of the Statewide Tick Eradication Act of 1918, you are hereby notified to have all of your cattle at McKinnon Vat, dipping vat, for disinfection under official [fol. 93] supervision on 24 day of August, 1922, and every fourteen days thereafter until further and otherwise notified. The Law makes dipping compulsory. Should you fail to dip your cattle, the law provides that the cattle be dipped and quarantined at your expense. The law further provides that, if necessary, the cattle be sold to cover the cost incident to such quarantine and dipping. This 23rd day of August 1922.

(Signed) J. C. Jeter, Cattle Inspector."

At Statenville, Ga.

Also forty-nine (49) additional dipping notices in the same form and of the same tenor and effect, directed to and served upon as many citizens of Echols County, Georgia, residing east of the Alapaha River. All of said notices having been signed and served in the month of August, 1922.

The foregoing constitutes all the material testimony adduced upon the trial of said case. The case was argued to the jury by counsel for the government and counsel for the defense, and after the argument the Court proceeded to charge the jury.

In the course of the charge the Court instructed the jury as follows:

"I have determined and so charge you, that the employment of ment by the Federal Authorities, acting through the Department of Agriculture, in the enforcement of this dipping law, in co-operation with the authorities of the state of Georgia, is valid, so you need not [fol. 94] concern yourselves further in this case with what you think, one way or the other, as to the wisdom of the law, the rightfulness of the law or the constitutionality of the law. I charge you, it is valid law and it is your duty to accept that as being correct."

Before the jury retired, counsel for the defense excepted to that part of the Court's charge to the effect that the employment of men by the Federal authorities acting through the Department of Agriculture, in the enforcement of the dipping law, in co-operation with the authorities of the State of Georgia, was valid upon the ground that it was erroneous and was prejudicial to the defendants, and an exception was duly noted and allowed by the Court.

Further in the course of the charge, the Court instructed the jury as follows:

"It could be shown to you, were it necessary to make a review of it, that from the beginning of the Act of Congress of 1884 through the several acts of the State of Georgia, under which this contract was made that has been introduced to you, that there has been manifested, not gentlemen, an invasion of the rights of the State of Georgia or its citizens on the part of the United States Government,—not that—and while this is not at all essential to the determination of the case, you will find throughout that there is a mutuality evidenced on both sides of an intention to have mutual co-operation; that the Federal employees were here acting under and by virtue of a contract made by the State of Georgia through an officer who was in terms authorized by the State of Georgia to make such a contract—[fol. 95] not the contract in terms, but a contract to carry that into effect. If, therefore, you believe that all or some of these named employees—these employees who are named in the indictment—engaged in the enforcement of the cattle dipping law, you will believe that they were lawfully engaged as employees or agents of the Government of the United States in Georgia, and that they come within the prohibition of the statute of the United States to this effect: 'Whoever shall forcibly assault, resist, oppose, prevent, impede or interfere with any officer or employee of the Bureau of Animal Industry of the Department of Agriculture in the execution of his duties, or on account of the execution of his duties' shall be punished as stated, and 'Whoever shall use any deadly or dangerous weapon in resisting any officer or employee of the Bureau of Animal Industry of the Department of Agriculture in the execution of his duties, with intent to commit a bodily injury upon him or to deter or prevent him from discharging his duties, or on account of the performance of his duties' shall be punished. Now, that is the fundamental law upon which is applied the law of conspiracy, which is this: 'If two or more persons conspire either to commit any offense

against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as stated in the statute."

Before the jury retired counsel for the defense excepted to that part of the charge to the effect that the Federal employees were here (in Georgia) acting under and by virtue of a contract made by the [fol. 96] State of Georgia through an officer who was in terms authorized by the State of Georgia to make such a contract—not the contract in terms—but a contract to carry the law into effect, and that if the jury should believe that the employees named in the indictment were engaged in the enforcement of the cattle dipping law, they would believe they were lawfully engaged as employees or agents of the Government of the United States in Georgia, and that they came within the prohibition of the Act of Congress referred to—on the ground that it was erroneous and prejudicial to the defendants, and an exception was duly noted and allowed by the Court.

Further in the course of the charge the Court instructed the jury as follows:

"Gentlemen, I charge you this; that the arrangement made between the United States, though its Department of Agriculture, and the State of Georgia, made through its State Veterinarian, as set forth in this contract which has been introduced in evidence, and the employment of agents to carry that out, as indicated in the contract, is valid."

Before the jury retired, counsel for the defense excepted to that portion of the charge to the effect that the arrangement made between the United States, th-ough its Department of Agriculture, and the State of Georgia, through its State Veterinarian, as set forth in the contract which had been offered and admitted in evidence, and the employment of agents to carry it out, as indicated in the contract, was valid upon the ground that the State Veterinarian of Georgia was [fol. 97] not authorized by law to make a contract with the Bureau of Animal Industry such as the one referred to and which had been offered and admitted in evidence, as aforesaid, and an exception was duly noted and allowed by the Court.

The jury then retired, and after deliberating for a considerable length of time, returned the following verdict:

Verdict omitted, being heretofore copied on page 20.

* * * * * * *

Thereupon the Court imposed upon the defendants convicted, to-wit: Oscar Thornton, Shabie Thornton, Inman Thornton, Wesley

McDonald, Waverly McDonald and Tiner Carroll, the following sentence:

Sentence omitted, being heretofore copied on page 20.

* * * * * * *

ORDERS EXTENDING TIME

During the term of Court at which said verdict was rendered and the sentence imposed, the Court, to-wit: on March 13, 1924, passed an order enlarging and extending the time for presenting for approval and filing a bill of exceptions in said case until the 17th day of May, 1924.

Thereafter, on May 15th, 1924, the Court, for good cause shown, passed an order for further enlarging and extending the time in which to prepare and present for approval and filing a bill of exceptions in said case until the 17th day of June 1924.

fol. 98] Before the expiration of the time allowed by the last mentioned order, to-wit: On June 16th, 1924, the Court passed an order further extending the time for preparing and presenting for approval and filing the bill of exceptions in said case until the 30th day of June, 1924, and in said order provided that such bill of exceptions might be presented to the Judge of said Court wherever he might be at the time.

IN UNITED STATES DISTRICT COURT

ORDER SETTLING BILL OF EXCEPTIONS

And now, in furtherance of Justice, and that right may be done, the defendants, Oscar Thornton, Shabie Thornton, Inman Thornton, Waverly McDonald, Wesley McDonald and Tinker Carroll tender and present this their bill of exceptions in said case to the action of the Court in the various particulars herein set out, and pray that same may be settled and allowed and that it be signed and sealed by the Court and made a part of the record. Which is accordingly done at Augusta, Georgia, this 27th day of June, 1924.

Wm. H. Barrett, United States Judge.

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fol. 99] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER TO FILE BILL OF EXCEPTIONS—Filed June 27, 1924

Thereafter, within the time allowed by the Court, to wit, on the 27th day of June, 1924, came certain of the defendants, to-wit:

Oscar Thornton, Shabie Thornton, Inman Thornton, Wesley McDonald, Waverly McDonald and Tinker Carroll, and duly tendered this their bill of exceptions in said case which, having been seen and examined by the Court and counsel, is by the Court allowed and approved, and the said bill of exceptions is signed and sealed by the Honorable William H. Barrett, the Judge of said Court before whom said proceedings were had, and the same is ordered by said Court to be filed and made a part of the record herein, which is now accordingly done. Let said bill of exceptions be filed and the filing shown of record as of this date.

[fol. 100] Witness the hand and seal of the Judge of said Court before whom said proceedings were had, this the 27th day of June, 1924.

(Signed) Wm. H. Barrett, United States Judge.

In United States District Court

[Title omitted]

Petition for Writ of Error—Filed Aug. 11, 1924

Certain of the defendants in the above stated case, to-wit, Oscar Thornton, Shabie Thornton, Inman Thornton, Wesley McDonald, Waverly McDonald and Tinker Carroll, feeling aggrieved at the [fol. 101] verdict of guilty returned against them on the 13th day of March, 1924, and by the judgment and sentence of the Court imposed upon them in said case on the same date, and also feeling aggrieved by the rulings and decisions of the Court and the Judge presiding therein, which are specifically set forth in their bill of exceptions and in the assignment of errors filed herewith, allege that the verdict of the jury and sentence of the Court aforesaid are unjust and erroneous and that said Court and the Judge thereof erred in making the rulings and decisions as in said bill of exceptions and assignment of errors set out, greatly to their prejudice and injury, all of which more fully and at large appear in said bill of exceptions and assignment of errors.

Wherefore, said named defendants now come, within the time allowed by law and pray that a Writ of Error may issue in their behalf to the United States Court of Appeals for the Fifth Circuit, for the correction of the errors so complained of, and that a transcript of the records, proceedings and papers in said case, duly authenticated, may be sent to said Circuit Court of Appeals, that such further proceedings may be had as may be proper in the premises. They further pray that inasmuch as they have heretofore entered into and given supersedeas bonds conditioned for their appearance to stand to and abide the final judgment and sentence of the Court in said case, an order be made directing that all further proceedings be superseded and stayed until final determination of the Writ of

[fol. 102] Error by the United States Circuit Court of Appeals for the Fifth Circuit.

Wilson & Bennett, Branch & Snow, Franklin & Langdale, E. K. Wilcox, Attorneys for the Defendants Oscar Thornton, Shabie Thornton, Inman Thornton, Wesley McDonald, Waverly McDonald and Tinker Carroll.

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING WRIT OF ERROR AND GRANTING SUPERSEDEAS—Filed Aug. 11, 1924

On this 29th day of July, 1924, came certain of the defendants in [fol. 103] the above stated case, to-wit: Oscar Thornton, Shabie Thornton, Inman Thornton, Wesley McDonald, Waverly McDonald and Tinker Carrol, by their attorneys of record, and filed herein and presented to the Court their petition for a Writ of Error to the United States Circuit Court of Appeals for the Fifth Circuit, with which they also present and assignment of error alleged to have been committed, and in their said petition they also prayed that a transcript of the records, proceedings and papers in said case, duly authenticated, to be sent to the United States Circuit Court of Appeals for the Fifth Circuit, that such further proceedings may be had as may be proper in the premises.

Upon consideration whereof, the Court does hereby allow and grant the Writ of Error, which said Writ of Error shall operate as a supersedeas.

This 29th day of July, 1924.

Wm. H. Barrett, United States District Judge.

[fol. 104] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENTS OF ERROR—Filed Aug. 11, 1924

Come now certain of the defendants in the above stated case, to-wit: Oscar Thornton, Shabie Thornton, Inman Thornton, Wesley McDonald, Waverly McDonald and Tinker Carroll, and file the following assignment of errors, upon which they will rely in the prosecution of the writ of error in said case, to-wit:

1

The Court erred in overruling the demurrer to the indictment and each count thereof, the said indictment and each count thereof

being fatally defective for each of the reasons set forth in the several grounds of the demurrer.

The Court erred in admitting in evidence over defendants' objection, the contract between A. D. Melvin, Chief of the Bureau of [fol. 105] Animal Industry, United States Department of Agriculture, and Peter F. Bahnsen, State Veterenarian, State Department of Agriculture of the State of Georgia, dated June 17th, 1915, which contract purported to provide for a plan of co-operation between the Bureau of Animal Industry of the United States Department of Agriculture and the State Veterenarian of the Department of Agriculture of the State of Georgia, for the eradication of the cattle tick in the State of Georgia.

Said contract when offered in evidence was objected to by counsel for the defendants, on the following grounds: (a) because Peter F. Bahnsen, State Veterenarian, was not authorized under the law to make any such contract with the Chief of the Bureau of Animal Industry, or with the Bureau of Animal Industry; (b) because there is nothing in the indictment which charges that the work of tick eradication in Echols County, Georgia, was proceeding at the time of the acts alleged to have been committed by the defendants, under the Act of Congress of May 29th, 1884, and there is nothing in said indictment which charges that there had been any contract or agreement between the State of Georgia or any authority of the State and the Department of Agriculture of the United States; and (c) because the Department of Agriculture had no authority under the law, to make such a contract, and the employees of the Bureau of Animal Industry were not authorized under the law to perform the duties set forth in the contract, even if it was made as appears from the memorandum of agreement offered in evidence.

The ruling and decision of the Court in admitting the said contract in evidence was erroneous, for each and all of said reasons.

[fol. 106] The Court erred in charging the Jury, as follows:

"I have determined and so charge you, that the employment of men by the Federal Authorities, acting through the Department of Agriculture in the enforcement of this dipping law, in co-operation with the authorities of the State of Georgia, is valid; so you need not concern yourselves further in this case with what you think one way or the other as to the wisdom of the law, the rightfulness of the law, or the constitutionality of the law. I charge you it is a valid law, and it is your duty to accept that as being correct."

Said charge was error, because (a) there is no authority of law for the Bureau of Animal Industry to engage in and carry on the work of dipping and disinfection of domestic cattle, in the State of Georgia, for the purpose of eradicating the cattle tick, in co-operation with the authorities of said State, or otherwise; and (b) the Federal Officers and employees of the Bureau of Animal In-

dustry, have no authority to engage in the enforcement of the State-wide tick eradication law.

4

The Court erred in charging the jury as follows:

"It could be shown to you were it necessary to make a review of it, that from the beginning of the Act of Congress of 1884, through the several Acts of the State of Georgia, under which this contract was made that has been introduced to you, that there has [fol. 107] been manifested, not, gentlemen, an invasian of the rights of the State of Georgia or its citizens, on the part of the United States Government,—not that—and while this is not at all essential to the determination of the case, you will find throughout that there is a mutuality evidence and evidence on both sides, of an intention to have mutual co-operation; that the Federal Employees were here acting under and by virtue of a contract made by the State of Georgia through an officer, who was in terms authorized by the State of Georgia, to make such a contract—not the contract in terms, but a contract to carry that into effect. If, therefore, you believe that all or some of these named employees—these employees who are named in the indictment—engaged in the enforcement of the cattle dipping law, you will believe that they were lawfully engaged as employees or agents of the Government of the United States, to this effect; 'whoever shall forceably assult, resist, oppose, prevent, impede or interfere, with any officer or employee of the Bureau of Animal Industry of the Department of Agriculture, in the execution of his duties, or on account of the execution of his duties' shall be punished as stated, and 'whoever shall use any deadly or dangerous weapon in resisting any officer or employee of the Bureau of Animal Industry of the Department of Agriculture, in the execution of his duties with the intent to commit a bodily injury upon him, or to deter or prevent him from discharging his duties, or on account of the performance of his duties' shall be punished. Now that is the fundamental law upon which is applied the law of Conspiracy, which is this: 'If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or [fol. 108] for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy, shall be' punished, as stated in the Statute."

Said charge was erroneous, because, (a) the Federal Employees named in the indictment, were not lawfully engaged as such, in the enforcement of the Georgia Cattle Dipping Law, and (b) there is no authority of law for the Bureau of Animal Industry to engage in and carry on the work of dipping and disinfection of domestic cattle in the State of Georgia, for the purpose of eradicating the cattle tick, in co-operation with the Authorities of said State, or otherwise.

5

The Court erred in charging the jury as follows:

"Gentlemen, I charge you this; that the arrangement made between the United States through its Department of Agriculture, and the State of Georgia made through its State Veterenarian, as set forth in this contract which has been introduced in evidence, and the employment of agents to carry that out, as indicated in the contract, is valid."

The said charge was erroneous, because (a) the arrangement made between the United States through its Department of Agriculture, and the State of Georgia through its State Veterenarian, as set forth in the contract referred to, is as matter of law, invalid, and (b) the employment of agents to carry out said contract was without authority of law and illegal.

[fol. 109] Wherefore, said named defendants pray that the judgment of the Court in said case may be reversed.

Wilson & Bennett, Branch & Snow, Franklin & Langdale, E. K. Wilcox, Attys. for Defendants Oscar Thornton, Shabie Thorton, Inman Thornton, Wesley McDonald, Waverly McDonald, and Tinker Carroll.

IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION OF DEFENDANTS FOR BAIL

To the Hon. Wm. H. Barrett, Judge of said Court:

Come now certain of the defendants in the above stated case, to-wit: Oscar Thornton, Shabie Thornton, Inman Thornton, [fol. 110] Wesley McDonald, Waverly McDonald and Tinker Carroll, against whom a verdict of guilty was returned and upon whom sentence was imposed therein, and show to the Court that heretofore, to-wit, on July 29th, 1924, they were allowed a Writ of Error from this Court to the United States Circuit Court of Appeals, for the Fifth Circuit, and by order of the Court it was provided that said Writ should operate as a supersedeas. They further show that the citation signed by the Judge of this Court, when said Writ of Error was allowed, has been duly served and that they are entitled to be admitted to bail pending the Writ of Error.

Wherefore, said named defendants pray that they be admitted to bail pending the Writ of Error, in such amount as may to the Judge of said Court seem good, reasonable, and proper.

Wilson & Bennett, Branch & Snow, Franklin & Langdale, E. K. Wilcox, Attorneys for Defendants Oscar Thornton, Shabie Thornton, Inman Thornton, Wesley McDonald, Waverly McDonald, and Tinker Carroll.

[fol. 111] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING BAIL —Filed Aug. 11, 1924

It appearing that a Writ of Error has been sued out by certain of the defendants in the above stated case, to-wit: **Oscar Thornton,** Shabie Thornton, Inman Thornton, Wesley McDonald, Waverly McDonald and Tinker Carrol returnable to the **United States Circuit** Court of Appeals, for the Fifth Circuit, from a judgment made and entered against them in said case on the 13th day of March, 1924, and that the citation signed by the Judge of this Court when the Writ of Error was allowed, has been duly served, it is now upon motion of said named defendants, ordered, that they be admitted to bail pending the Writ of Error, in the sum of $1,000.00 each, conditioned as the law directs.

This August 7th, 1924.

Wm. H. Barrett, U. S. District Judge.

[fol. 112] BAIL BOND OF OSCAR THORNTON FOR $1,000—Approved and filed Aug. 11, 1924; omitted in printing

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[fols. 113 & 114] BAIL BOND OF SHABIE THORNTON FOR $1,000—Approved and filed Aug. 11, 1924; omitted in printing

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[fols. 115 & 116] BAIL BOND OF INMAN FOR $1,000—Approved and filed Aug. 11, 1924; omitted in printing

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[fols. 117 & 118] BAIL BOND OF WESLEY McDONALD FOR $1,000—Approved and filed Aug. 11, 1924; omitted in printing

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[fols. 119 & 120] BAIL BOND OF WAVERLY McDONALD FOR $1,000—Approved and filed Aug. 11, 1923; omitted in printing

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[fols. 121 & 122] BAIL BOND OF TINKER CARROLL FOR $1,000—Approved and filed Aug. 11, 1924; omitted in printing

[fol. 123] IN UNITED STATES DISTRICT COURT

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed Aug. 11, 1924

To the Clerk of said Court:

You will please incorporate into the transcript of the record in the above stated case, to be sent to the United States Circuit Court of Appeals, for the Fifth Circuit, the following parts of the record:

[fol. 124] 1. The Indictment.

2. The demurrer to the indictment and the order overruling the same.

3. The plea of not guilty entered by the Defendants.

4. The verdict of the Jury and the judgment and sentence of the Court.

5. The order granted on March 13th, 1924, extending the time for presenting for approval and filing, a bill of exceptions, until May 17th, 1924.

6. The order granted on March 13th, 1924, granting a supersedeas and admitting the defendants, Oscar Thornton, Shabie Thornton, Inman Thornton, Wesley McDonald, Waverly McDonald and Tinker Carroll, to bail.

7. The order granted May 15th, 1924, further extending the time for presenting for approval and filing, a bill of exceptions, until June 17th, 1924.

8. The order granted June 16th, 1924, further enlarging and extending the time for presenting for approval and filing, a bill of exceptions, until June 30th, 1924.

9. The bill of exceptions and order settling and allowing the same.

10. The petition for Writ of Error.

11. The order allowing the Writ of Error.

12. The assignment of errors.

13. The citation to the United States of America with the acknowledgment of service thereon.

[fol. 125] 14. The petition for order allowing bail pending the writ of error, and the order granted thereon.

15. The bail bonds of the defendants pending the writ of error.

16. The pracipe for transcript of the record.

Branch & Snow, Wilson & Bennett, Franklin & Langdale, E. K. Wilcox, Attorneys for Defendants Oscar Thornton, Shabie Thornton, Inman Thornton, Wesley McDonald, Waverly McDonald, and Tinker Carroll.

Service of the foregoing præcipe for transcript acknowledged; copy received, and all other and further service waived.

This August 5, 1924.

F. G. Boatright, United States Attorney. Chas. L. Redding, Asst. United States Attorney.

Writ of Error and Citation omitted from the printed record, the originals thereof being on file in the office of the Clerk of the U. S. Circuit Court of Appeals.

* * * * * * *

[fol. 126] IN UNITED STATES DISTRICT COURT

CLERK'S CERTIFICATE

I, W. E. Perry, Deputy Clerk of the District Court of the United States for the Southern District of Georgia, Southwestern Division, do hereby certify that the within and foregoing one hundred and eighteen (118) pages of typewritten matter is a true, full and complete transcript of such parts of the record in the case of the United States of America vs. Oscar Thornton, Shubie Thornton, Inman Thornton, Wesley McDonald, Waverly McDonald, Tinker Carroll, J. B. Hicks, W. W. Pennington, H. J. Carter, alias Mann Carter, Fred Carter, Will Carter, Borah Corbett, Floyd Carter, George Herndon, Rader Carter, Wiley Corbett, Frank Staten, E. W. Prescott, Buck Carter, Neely Hires and Jim Howell, (being Criminal Case No. 688 in said District and Division), as is specified in the præcipe of counsel for the appellants in said cause, to-wit, Oscar Thornton, Shable Thornton, Inman Thornton, Wesley McDonald, Waverly McDonald and Tinker Carroll, as fully as the same appears of file and of record in the office of the Clerk of the District Court of the United States for the Southern District of Georgia, at Valdosta, Georgia. Said præcipe filed by counsel for appellants is a part of the foregoing record, and is numbered pages one hundred and seventeen and one hundred and eighteen thereof.

In witness whereof, I have hereunto set my hand and attached the official seal of the said Court, at Valdosta, Georgia, this the 11th day of August, A. D. 1924.

W. E. Perry, Deputy Clerk of the District Court of the United States for the Southern District of Georgia. (Seal.)

[fol. 127] IN UNITED STATES CIRCUIT COURT OF APPEALS

ARGUMENT AND SUBMISSION—October 8th, 1924.

On this day this cause was called, and, after argument by L. W. Branch, Esq., for plaintiffs in error, and Charles L. Redding, Esq., Assistant United States Attorney, for defendant in error, was submitted to the Court.

[fol. 128] IN UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

No. 4413

OSCAR THORNTON, et als., Plaintiffs in Error,

versus

THE UNITED STATES OF AMERICA, Defendant in Error

Error to the District Court of the United States for the Southern District of Georgia

E. K. Wilcox, L. W. Branch, Harley Langdale, Omer W. Franklin, John W. Bennett, Russell Snow (Wilson & Bennett on the brief), for Plaintiffs in Error.

F. G. Boatright, U. A. Atty., Chas. L. Redding, Asst. U. S. Atty., for defendant in Error.

Before Walker, Bryan and King, Circuit Judges

OPINION—Filed November 5, 1924

BRYAN, Circuit Judge:

The plaintiffs in error, hereinafter called defendants, were convicted of a conspiracy to use deadly and dangerous weapons upon employees of the Bureau of Animal Industry of the United States Department of Agriculture, with intent to deter and prevent such employees from discharging their duties of supervising the dipping [fol. 129] of cattle, in order to prevent a spread of splenetic fever among cattle, and in order to eradicate from tick infested cattle what is commonly known as the cattle fever tick, in violation of § 62 of the Criminal Code.

Several overt acts were charged, but it is unnecessary to enumerate them as it is not denied that there was sufficient proof of some of them.

It is first insisted that the trial court erred in overruling a demurrer to the indictment. The principal objection to the indictment is that it fails to allege or show that the cattle to be shipped were being, or were intended to be, shipped in interstate commerce. We are of opinion that this objection is untenable. The Commis-

sioner of Agriculture is authorized by the Act of May 29, 1884, 23 Stat. 31, to prepare such rules and regulations as he may deem necessary for the suppression of contagious, infectious and communicable diseases of domestic animals, to make investigations, and to co-operate with state authorities, and by disinfection and quarantine measures to prevent the spread of disease from one state into another. The County of Echols, in which the employees of the Bureau of Animal Industry were alleged to be engaged, is bounded on the south by a county in the State of Florida. The supervision of cattle complained of had a direct tendency to prevent the spread of disease into another state. This act of supervision was so closely connected with interstate commerce as to authorize the Government to supervise the dipping of domestic cattle.

Another objection to the indictment is that it fails to allege an acceptance by the State of Georgia of the regulations and mehods of the Commissioner of Agriculture of the United States, which is contemplated by section 3 of the Act of Congress of 1884. Such acceptance appears from statutes of Georgia which authorize the State [fol. 130] veterinarian to assume charge of the work of cattle tick eradication in co-operation with federal authorities, (Georgia Laws of 1910, page 125), and provide that cattle infested with cattle tick shall be dipped in vats properly charged with arsenical solution, in accordance with recommendations by the United States Bureau of Animal Industry, (Georgia Laws of 1918, page 256). It was not necessary that the indictment should plead the Georgia statutes, as it was the duty of the trial court to take judicial notice of them. United Divers Supply Co. v. Commercial Credit Co., 289 Fed. 316. We are of opinion therefore that the indictment is sufficient.

A contract between the State veterinarian of Georgia and the chief of the Bureau of Animal Industry was admitted in evidence over defendant's objection. It merely provided for co-operation in the work of tick eradication. We think it was admissible as showing that the federal employees were present in the county by authority of the state, and were not mere intruders or intermeddlers; but if inadmissible, the contract could not possibly have operated to the injury of the defendants.

Objections were made to certain charges of the court, but they only raise questions which have already been disposed of, and need not be considered.

The judgment is affirmed.

[fol. 131] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

JUDGMENT—November 5, 1924

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Georgia, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause, be, and the same is hereby, affirmed.

[fol. 132] In United States Circuit Court of Appeals

Clerk's Certificate

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 127 to 131 next preceding this certificate contain a full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 4413, wherein Oscar Thornton, et als., are plaintiffs in error and the United States of America is defendant in error, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 126 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 2nd day of January, A. D. 1925.

Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals, Fifth Circuit. (Seal of United States Circuit Court of Appeals, Fifth Circuit.)

[fol. 133] In Supreme Court of the United States

Order Granting Petition for Certiorari—Filed March 9, 1925

On Petition for Writ of Certiorari to the United States Circuit Court Appeals for the Fifth Circuit

On consideration of the petition for a writ of certiorari herein to the United States Circuit Court of Appeals for the Fifth Circuit, and of the argument of counsel thereupon had,

It is now here ordered by this Court that the said petition be, and the same is hereby, granted, the record already on file as an exhibit to the petition to stand as a return to the writ.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1924.

Oscar Thornton, Shabie Thornton, Inman Thornton, Wesley McDonald, Waverly McDonald and Tinker Carroll, Petitioners. vs. United States of America, Respondent.	No.----------

Dear Sirs:

Please take notice that upon the annexed petition and brief of and on behalf of the above named petitioners, and a certified copy of the transcript of the record in this cause, including the proceedings in the United States Circuit Court of Appeals for the Fifth Circuit, submitted herewith, an application will be made to the Supreme Court of the United States, to be held at the Capitol, Washington, D. C., on Monday, the 16th day of February, 1925, at the opening of the Court on that day, or as soon thereafter as counsel can be heard, for a writ of certiorari to be directed to the United States Circuit Court of Appeals for the Fifth Circuit, to review the judgment of said Court made and entered in the above entitled cause on the 5th day of November, 1924, to the end that the said judgment may be set aside, reversed

and annulled, and that such further proceedings in said cause may be had as to justice shall appertain.

Dated at Valdosta, Georgia, this January 17th, 1925.

E. K. WILCOX,
OMER W. FRANKLIN,
Attorneys and Counsel
for Petitioners.

E. K. WILCOX,
OMER W. FRANKLIN,
HARLEY LANGDALE,
JOHN W. BENNETT,
L. W. BRANCH,
RUSSELL SNOW,
Of Counsel.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1924.

Oscar Thornton, Shabie Thornton, Inman Thornton, Wesley McDonald, Waverly McDonald and Tinker Carroll, Petitioners. vs. United States of America, Respondent.	No.----------

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

To the **Honorable Supreme Court of the United States:**

The petition of Oscar Thornton, Shabie Thornton, Inman Thornton, Wesley McDonald, Waverly McDonald and Tinker Carroll, respectfully shows:

I.

NATURE OF CASE.

Petitioners, together with sixteen others, were indicted by the grand jurors in and for the Southwestern Division of the Southern District of Georgia for conspiracy to commit an offense against the United States, the offense charged briefly stated being the use of deadly and dangerous weapons for the purpose of deterring and preventing ten named employees of the Bureau of Animal Industry of the United

States Department of Agriculture from discharging their duties as such employees of said Bureau of Animal Industry, which said employees were charged with the duty of supervising the dipping of and causing to be dipped cattle to prevent the spread of splenetic fever among cattle, and in order to eradicate and remove from tick infested cattle what is commonly known as the cattle fever tick, all in Echols County, Georgia. There were a number of overt acts charged against the other defendants, such as the dynamiting of dipping vats and the burning of dipping pens and personal encounters with certain of the employees of the Bureau of Animal Industry, but the overt act charged against the six defendants who are herein petitioners was that they used deadly and dangerous weapons in shooting at, towards and in the direction of the employees of the Bureau of Animal Industry, aforesaid. The six defendants who appear herein as petitioners were convicted; none of the other defendants were convicted.

The State of Georgia, through its agents, had been endeavoring to carry on the work of tick eradication under the State law in Echols County for several years, and a majority of the overt acts charged in the indictment were those committed prior to the entry upon the scene of action of the employees of the Bureau of Animal Industry.

Ten of the employees of the Bureau of Animal Industry, armed with repeating rifles and automatic pistols, were introduced into Echols County under an agreement between the State Veterinarian and the Chief of the Bureau of Animal Industry of the Department of Agriculture and were placed in a camp in Echols County and immediately undertook and carried on the detail work of tick eradication, as provided for by the law of the State of Georgia, such as serving notices on cattle owners that they must appear at certain dipping vats and dip their cattle on certain days, riding the range and gathering up cattle that had not been dipped and dipping them and holding them until the owners paid the expense of dipping, attending the dipping vats on dipping days heavily armed, and doing all of the work which, under the State law, the agents of the State Veterinarian

had been performing and were charged with the duty of performing. The six defendants, who are herein petitioners, passed by Camp McKinnon on a certain Sunday afternoon and fired a pistol in the direction of the camp and made certain threats, and later on returned and fired again and were met by a volley from the machine guns, automatic rifles and pistols, but no one was injured in the melee. Echols County was quarantined territory under the orders of the Bureau of Animal Industry of the Department of Agriculture and is a border county, bordering on the State of Florida. The border counties in Florida are likewise quarantined territory under the orders of the Bureau of Animal Industry, and, as far as the evidence developed, have not undertaken the eradication of the cattle tick. The work being done in Echols County was purely domestic in its character, there being no suggestion that any of the cattle were being offered for interstate commerce or were intended for interstate commerce, and there being no allegation in the indictment or suggestion in the evidence that there was any purpose on the part of the state authorities or the Bureau of Animal Industry to prevent the spread of splenetic fever among cattle from Georgia to Florida, the conditions in Florida with reference to the cattle tick not being shown by any evidence.

The petitioners were convicted and a writ of error was sued out to the Circuit Court of Appeals for the Fifth Circuit.

II.

ACTION IN THE CIRCUIT COURT OF APPEALS

On appeal, the Circuit Court of Appeals for the Fifth Circuit affirmed the verdict and sentence of the District Court, holding, among other things, that "the County of Echols, in which the employees of the Bureau of Animal Industry were alleged to be engaged, is bounded on the south by a county in the State of Florida. The supervision of cattle complained of had a direct tendency to prevent the spread of diseases into another state. This act of supervision was

so closely connected with interstate commerce as to authorize the Government to supervise the dipping of domestic cattle."

III.

QUESTIONS OF GENERAL IMPORTANCE INVOLVED.

The offense charged in the indictment is defined in An Act to Enable the Secretary of Agriculture to Establish and Maintain Quarantine Districts, etc., approved March 3, 1905, § 5; Criminal Code § 62; U. S. Comp. Stat. § 10230, and the duties of the employees of the Bureau of Animal Industry are defined and limited by the terms of An Act for the Establishment of a Bureau of Animal Industry, approved May 29, 1884, 23 Stat. § 32; U. S. Comp. Stat. § 8691.

The questions involved and which were raised by demurrer to the indictment and in other ways during the trial of the case are:

First. Were the employees of the Bureau of Animal Industry of the Department of Agriculture of the United States legally charged with the duty of supervising the dipping of and were they legally engaged in the causing to be dipped cattle in Echols County, Georgia, and does the Act of May 29, 1884, 23 Stat. § 32; U. S. Comp. Stat. § 8691, authorize them as such employees to camp in Echols County, Georgia, and, heavily armed, cause the citizens of Georgia by notices served on them and by other machinery of the Georgia law to bring their cattle to certain dipping vats and dip them, and to seize and sequester and dip cattle that have not been so dipped and hold the same until dipping charges are paid, there being no allegation in the indictment and no evidence to show that the work being done was anything more than the routine work of enforcing the laws of Georgia with reference to the destruction of cattle ticks, and there being nothing to show that interstate commerce was even remotely concerned in the alleged duties being performed by the employees of the Bureau of Animal Industry?

Second. If the Act for the Establishment of a Bureau of

Animal Industry, approved May 29th, 1884, 23 Stat. § 32, U. S. Comp. Stat. § 8691, does vest in the Secretary of Agriculture and through him in the Bureau of Animal Industry and in its employees the right to arm themselves, to camp in the midst of a Georgia county, to serve dipping notices under the Georgia law, to attend the dipping vats and cause the citizens to dip their cattle, to seize and sequester and hold cattle not dipped, all under the provisions of the Georgia law, and this simply as a part of the general state work of disinfecting cattle, and not remotely connected in any way with interstate commerce, the second question of importance raised, and to be considered, is whether or not the above quoted Act of Congress is constitutional in that said Act and especially section three thereof so construed attempts to give to the Secretary of Agriculture the authority to take such steps as may be necessary to prevent the spread of contagious diseases among cattle from one state or territory to another, regardless of whether or not the cattle have become the subjects of interstate commerce, and vests in the Secretary of Agriculture rights and powers and duties which were reserved to the states and to the State of Georgia, and were not delegated, as aforesaid, to the United States or the Congress thereof, or to any of the officers who derive their authority and exercise their offices and perform their duties under and by virtue of any law passed by the Congress of the United States, the compulsory dipping of domestic cattle in Georgia, under a state law, which has as its purpose the eradication from domestic cattle of the cattle tick being purely a matter within the jurisdiction of the General Assembly of the State of Georgia, and the exercise of a power which was reserved to the state upon the adoption of the Constitution and which was never delegated to Congress by the State of Georgia.

Third. Was the indictment a valid indictment if it failed to allege the acceptance by the State of Georgia of rules and regulations for the suppression of contagious diseases among cattle, prepared by the Secretary of Agriculture, and if it failed to allege that plans and methods for the suppression and extirpation of said diseases adopted by the State

of Georgia had been accepted by the Secretary of Agriculture, these being conditions precedent under the Act for the Establishment of a Bureau of Animal Industry, appproved May 29, 1884, above referred to, in the exercise of the powers vested in the Secretary of Agriculture by said Act?

Fourth. Was not the indictment defective in that it nowhere allleges that the cattle being dipped were the subject matter of interstate commerce, or that said cattle had in any way under the law become subject to the supervision or control or power of the Secretary of Agriculture?

These questions are of general importance throughout the country and have been in recent years and will continue to arise as long as active steps are being taken by the various states to eradicate contagious, infectious and communicable diseases from cattle, and it is of great importance and gravity that the rights and powers of the Bureau of Animal Industry should be clearly defined in order that unauthorized acts on the part of the employees of the Bureau of Animal Industry will not arouse animosity and hostility to the Federal authorities and create irritation over what the public may generally regard as acts of usurpation and an excess of authority.

The questions are of great gravity and importance because the opion of the Circuit Court of Appeals for the Fifth Circuit is to the effect that simply because a county borders upon another state, the Federal Government has the right to undertake compulsory tick eradication from cattle regardless of the question of interstate commerce and regardless of whether or not the border counties in the adjacent state are themselves engaged in the work of tick eradication or are free from tick infestation. The Circuit Court of Appeals for the Fifth Circuit in its opinion took judicial cognizance of the fact that Echols County was a border county and it could likewise have taken judicial cognizance of the fact that the northern part of Florida has not entered upon the work of tick eradication at all and is quarantined territory because of tick infestation therein.

The questions involved are of great gravity and importance because they are Constitutional questions and ques-

tions involving the construction of statutes of the United States.

IV.

RECORD IN THE COURT OF APPEALS.

Petitioners file herewith a certified transcript of the record and proceedings in the Circuit Court of Appeals for the Fifth Circuit, as required by the rules.

V.

NOTICE OF APPLICATION.

Due notice of this application has been given to the District Attorney of the United States for the Southern District of Georgia, as appears by the acknowledgment of service hereto attached.

WHEREFORE, petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Court, directed to the said United States Circuit Court of Appeals for the Fifth Circuit, commanding said Court to certify and send to this Court on a day certain, to be therein designated, a full and complete transcript of the record in said cause, and of all proceedings in said Circuit Court of Appeals, which were entitled in that cause, to the end that said cause may be reviewed and determined by this Court as provided by law, and that your petitioners may have such other or further relief or remedy in the premises as to this Court may seem appropriate and that said final judgment of said Circuit Court of Appeals be reversed, and set aside, and such other proceedings in the cause be had as to justice shall appertain.

And petitioners will ever pray, etc.
Dated this 17th day of January, 1925.

E. K. WILCOX,
OMER W. FRANKLIN,
Attorneys and Counsel
for Petitioners.

E. K. WILCOX,
OMER W. FRANKLIN,
HARLEY LANGDALE,
JOHN W. BENNETT,
L. W. BRANCH,
RUSSELL SNOW,
Of Counsel.

STATE OF GEORGIA
County of Lowndes } ss.:

E. K. Wilcox, being duly sworn, says: That he is one of counsel for Oscar Thornton, Shabie Thornton, Inman Thornton, Wesley McDonald, Waverly McDonald and Tinker Carroll, petitioners herein; that he prepared the foregoing petition and that the allegations thereof are true, as he verily believes.

E. K. WILCOX.

Sworn to and subscribed before me, this 20th day of January, 1925.

NINA CONNELL,

Notary Public, Lowndes County, Georgia.

My commission expires Dec. 19th, 1927.

[SEAL]

To the District Attorney of the United States, for the Southern District of Georgia:

You are hereby notified that on Monday, the 16th day of February, 1925, the undersigned will cause to be submitted to the Honorable The Supreme Court of the United States a petition for a writ of certiorari, requiring the Circuit Court of Appeals for the Fifth Circuit to certify to said Supreme Court for its review and determination the cause in said Circuit Court of Appeals entitled Oscar Thornton, Shabie Thornton, Inman Thornton, Wesley McDonald, Wavery McDonald and Tinker Carroll, plaintiffs in error, vs.

United States of America, defendant in error, No. 4413, October term, 1924.

E. K. WILCOX,
OMER W. FRANKLIN,
Attorneys and Counsel
for Petitioners.

E. K. WILCOX,
OMER W. FRANKLIN,
HARLEY LANGDALE,
JOHN W. BENNETT,
L. W. BRANCH,
RUSSELL SNOW,
Of Counsel.

Service of the foregoing petition for certiorari and brief in support thereof and notice that the same will be submitted on the 16th day of February, 1925, hereby acknowledged. Copies received. All other and further notice and service hereby waived.

This day of February, 1925.

United States Attorney.

Asst. United States Attorney.

IN THE SUPREME COURT OF THE UNITED STATES.

Oscar Thornton, Shabic Thornton, Inman Thornton, Wesley McDonald, Waverly McDonald and Tinker Carroll, Petitioners. vs. United States of America, Respondent.	Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

BRIEF OF COUNSEL FOR PETITIONERS.

Inasmuch as all of the essential facts are stated in the petition for certiorari, it is not necessary to restate them here. An examination of the assignment of errors (record p. 104 et seq.) will show that the following questions were presented to the Circuit Court of Appeals for decision and are here involved:

1. Were the employees of the Bureau of Animal Industry of the United States Department of Agriculture, whose names are set out in the indictment, charged under the law with the duty of supervising and causing to be dipped cattle in Echols County, Georgia, for the purpose of preventing the spread of splenetic fever among cattle, and in order to eradicate from tick infested cattle in said county what is commonly known as the cattle fever tick?

2. Is the Act of Congress, approved May 29th, 1884, entitled "An Act for the Establishent of a Bureau of Animal Industry," etc., constitutional?

3. If said Act is constitutional, does it, when properly construed, confer upon the United States Department of Agriculture authority to employ agents of the Bureau of

Animal Industry in the disinfection and quarantine of domestic cattle not moving or intended to be moved in interstate commerce?

4. Did the indictment contain sufficient allegations to bring it within the provisions of the Act of Congress of May 29, 1884, supra, and especially section 3 thereof, the indictment not alleging that the State of Georgia ever accepted the rules and regulations for the suppression and extirpation of infectious, contagious and communicable diseases of live stock prepared by the Secretary of Agriculture, and by him certified to the executive authority of the State, or that plans and methods for the suppression and extirpation of said diseases heretofore adopted by the State of Georgia had been accepted by the Secretary of Agriculture, and there being no allegation that the Governor, or other properly constituted authority of said State, had signified a readiness to co-operate for the extinction of contagious diseases described in the Act?

The indictment charges that in the year 1920, the twenty-one defendants named therein, in the County of Echols, entered into a conspiracy to commit an offense against the United States; that the offense which they conspired to commit was the unlawful, willful and knowing use of deadly and dangerous weapons for the purpose of deterring and preventing nine named employees of the Bureau of Animal Industry of the United States Department of Agriculture from discharging their duties as such employees, which said employees were then and there charged with the duty of **supervising the dipping of and causing to be dipped cattle,** in order to prevent the spread of splenetic fever. The overt acts charged in the first count were: (1) The shooting at and toward the employees of the Bureau of Animal Industry by the six defendants who were found guilty, it being alleged that such employees of the Bureau were encamped for the night and were then and there engaged in the performance of their duties as such employees, which, of course, refers to the duty of supervising the dipping of and causing to be dipped cattle; (2) The killing of Max Lockridge, and

the wounding of Roy Richey, two of the employees of the Bureau, by Mann Carter and Will Carter, two of the defendants, which said employees were engaged in the discharge of their duties as such, to-wit: The supervising the dipping of and causing to be dipped cattle; (3) The commission of an assault and battery upon W. D. Counts by three of the defendants (who were not convicted), the said Counts being one of the employees of the Bureau, who was engaged in the discharge of his duties as such; and (4) The shooting at John Loftin, Jr., and Frank Peterson, who are alleged to be employees of the Bureau (but were not such in fact), by eight of those named in the indictment, which said alleged employees were at the time engaged in guarding a dipping vat in Echols County.

The overt acts charged in the second count were: (1) The dynamiting of several dipping vats, and the destruction by fire of other vats; and (2) The burning of certain cattle spray pens.

It will, therefore, be observed that the duties which the nine employees of the Bureau of Animal Industry were performing in Echols County, Georgia, were duties incident to the systematic work of disinfecting the cattle in that county, said work of disinfection being carried on under the supervision of and by compulsion of those nine employees, and consisting of the dipping and spraying of cattle, which were domestic property of the citizens of that county and which were in no way the subjects of interstate commerce. Section 3 of the Act of Congress of May 29, 1884, entitled "An Act for the establishment of a Bureau of Animal Industry to prevent the exportation of diseased cattle, and to provide means for the suppression and extirpation of pleuropneumonia and other contagious diseases among domestic animals," is the portion of the Act by virtue of which it is insisted by the Government that the employees of the Bureau were in Echols County and were engaged in the work of supervising the dipping of and causing to be dipped cattle, in order to prevent the spread of splenetic fever among cattle, and in order to eradicate from tick infested animals what is commonly known as the cattle fever tick. That

section, read in the light of the entire Act, plainly has as its purpose co-operation with the State authorities on the part of the Bureau in an advisory way, in so far as the work of extirpating the cattle tick from domestic animals is concerned. The Commissioner of Agriculture was charged with the duty of investigation, the compilation of statistics, and the ascertainment of the causes and the cures for contagious diseases among domestic animals, and with the duty of passing this information on to the State authorities. He was further charged with the duty of assisting the State authorities in an advisory capacity in the work of extirpating the cattle tick and other contagious diseases among domestic animals. So long as a contagious disease was confined to the cattle of one particular state, and the work to be done was simply the extirpation of the cattle tick upon the domestic cattle of that State, this Act and all other Acts of Congress could give no authority to the employees of the Bureau of Animal Industry to engage in the work of supervising the dipping of and causing cattle to be dipped. To do so would be a palpable invasion of the rights of the states, and the employees of the Bureau would be engaged in a work which was peculiarly within the scope of the duties of the State agents.

Section 3 provides that the Commissioner of Agriculture shall prepare rules and regulations as his investigation indicates will be effective for the suppression and extirpation of infectious and contagious diseases among cattle, and he is charged with the duty of certifying these rules and regulations to the executive authorities of the States, and of inviting the executive authorities to co-operate in the enforcement and execution of these rules. That section also provides that when the plans of the Commissioner shall have been accepted by any particular State, or when any particular State formulates plans of its own and said plans and methods are acceptable to him, and the Governor of the State signifies his readiness to co-operate with the Commissioner for the extirpation of any contagious disease among cattle, the said **Commissioner of Agriculture is hereby authorized to expend so much of the money appropriated by**

this Act as may be necessary in such investigation and in such disinfection and quarantine measures as may be necessary to prevent the spread of the disease from one state or territory into another. The legislative intent is clearly indicated by the last few words of the section. The Commissioner of Agriculture was authorized to spend the money on a thorough investigation of the causes and cures of contagious diseases among cattle. He was, however, authorized to spend said appropriation in measures of disinfection and quarantine only when any particular disease was to be confined within any particular State.

Section 5 of the Act approved March 3, 1905, entitled "An Act to enable the Secretary of Agriculture to establish and maintain quarantine districts, to permit and regulate the movement of cattle and other live stock therefrom, and for other purposes," (Penal Code, section 62) provides a penalty for any interference with any officer or employee of the Bureau of Animal Industry **in the execution of his duties, or on account of the execution of his duties.** It was under section 3 of the Act of May 29, 1884, and section 5 of the Act of March 3, 1905, that the defendants were indicted and tried, and the very essence of the offense is the charge that the employees of the Bureau of Animal Industry who were interfered with were, at the time of said interference, lawfully engaged in a duty with which they were lawfully charged, and that duty in which they were engaged was, according to the allegations of the indictment, the supervising the dipping of and causing to be dipped cattle in Echols County. Not one word in the indictment indicates that the work they were doing was necessary to prevent the spread of contagious diseases from one State into another. The indictment does not charge that the cattle which were being dipped had become the subjects of, or were even intended for interstate commerce.

It would appear from one of the allegations in the indictment that the nine employees who had organized a camp known as Camp McKinnon, in the heart of Echols County, were engaged in the dipping of, and were by compulsion causing the citizens of the county to dip their cattle, not

for the purpose, in so far as the indictment discloses, of preventing the spread of disease from one state to another, but, according to the allegations made, to prevent the spread of splenetic fever among cattle—that is, among cattle in Echols County, and, as the indictment further alleged, "in order to eradicate and remove from tick infested animals what is commonly known as the cattle fever tick." There is nothing in the Act establishing the Bureau of Animal Industry which charges the employees of the Bureau with the performance of the duties which the indictment alleged they were performing at the time the overt acts are alleged to have been committed. If the employees of the Bureau were in Echols County using compulsion and force (and the word "causing" implies that) to require the citizens of that county to dip their cattle, they were engaged in the work of usurpation of authority and of tyranny, and it was not the intention of Congress in passing the Act of March 3, 1905, to **penalize the lawful resistance to the exercise of unlawful authority.** If, by the Act of May 29, 1884, establishing a Bureau of Animal Industry, it was the intention of Congress to confer upon the Secretary of Agriculture authority to send agents and employees of the Bureau into the borders of any State in the Union and empower them to supervise the dipping and by compulsion and force cause cattle to be dipped, the Act must be held unconstitutional and void. In this connection we respectfully ask a careful consideration of the following cases which are, in our opinion, controlling upon that question:

128 U. S. 1, Kidd vs. Pearson.
85 Fed. 425, U. S. vs. Boyer.
154 U. S. 210, Covington, etc. Bridge Co. vs. Kentucky.
10 Wall. 557, In re: The Daniel Ball.
116 U. S. 517, Coe vs. Errol.
52 Fed. 113, In re: Greene.
9 Wheat. 1, Gibbons vs. Ogden.

In Kidd vs. Pearson, 128 U. S. 1, supra, Mr. Justice Lamar said:

"No distinction is more popular to the common mind, or more clearly expressed in economic and political literature, than that between manufactures and commerce. Manufacture is transformation,—the fashioning of raw materials into a change of form for use. The buying and selling and the transportation incidental thereto constitute commerce; and the regulation of commerce in the constitutional sense embraces the regulation, at least, of such transportation. The legal definition of the term as given by this court in County of Mobile vs. Kimball, 102 U. S. 691, 702, is as follows: 'Commerce with foreign nations and among the states, strictly considered, consist in intercourse and traffic, including in these terms navigation and the transportation and transit of persons and property, as well as the purchase, sale and exchange of commodities.' If it be held that the term includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that congress would be invested, to the exclusion of the states, with the power to regulate, not only manufacture, but also agriculture, horticulture, stock raising, domestic fisheries, mining — in short, every branch of human industry. For is there one of them that does not contemplate, more or less clearly, an interstate or foreign market? Does not the wheat grower of the Northwest, and the cotton planter of the South, plant, cultivate and harvest his crop with an eye on the prices at Liverpool, New York and Chicago? The power being vested in congress, and denied to the states, it would follow as an inevitable result, that the duty would devolve on congress to regulate all of these delicate, multiform and vital interests—interests which in their nature are, and must be, local in all the details of their successful management. It is not necessary to enlarge on, but only to suggest, the impracticability of such a scheme, when we regard the multitudinous affairs involved and the almost infinite variety of their minute details."

While the decision in the United States vs. Boyer, supra, was by a District Judge, it is quite evident that the learned juris who passed on that case made a careful study of

the question there presented and which is directly involved in the instant case. He concluded: (a) That the crime of bribery could not be predicated upon the offer of a reward not to perform duties for the performance of which there was no legal or constitutional warrant; and (b) That the killing of cattle and the preparation of their carcasses for shipment in interstate commerce was not interstate commerce, and that the employees of the Bureau of Animal Industry engaged in the work of inspecting cattle which had been slaughtered and were being packed preparatory to being shipped in interstate commerce were not engaged in the performance of duties of inspection legally conferred upon them, and that the Act of Congress found in 1st Supp. Rev. St. 937, and 2nd Supp. Rev. St. 403, whereby the Secretary of Agriculture was empowered to have made a careful inspection of cattle, sheep and hogs at slaughter houses located in the several states, which were about to be slaughtered, the products of which were intended for sale in other states or foreign countries, was unconstitutional.

We take it that no one will seriously contend that the power claimed in this case was conferred upon Congress by the general welfare clause of the Constitution, because it contains no power of itself to enact any legislation, but according to the most liberal view is only a limitation on the taxing power of the United States. Does the power then "to regulate commerce with foreign nations and among the several states and with the Indian tribes" embrace the power to send inspectors within a state to supervise the dipping of and cause cattle to be dipped when they are not subjects of interstate commerce, or intended for interstate commerce? Most assuredly not.

If it was the intention of Congress to confer by the Act of May 29, 1884, authority upon the agents and employees of the Bureau of Animal Industry to go within the borders of a state and supervise the dipping of and cause cattle to be dipped, irrespective of whether or not they were the subjects of interstate commerce, the Act is void. In Illinois Central vs. McKendree, 203 U. S. 514, it was held:

"Quarantine regulations promulgated by the Secretary of Agriculture acting under cover of the Act of February 2, 1903, entitled 'An Act to Enable the Secretary of Agriculture to More Effectually Suppress and Prevent the Spread of Contagious and Infectious Diseases of Live Stock, and for Other Purposes,' are void as in excess of the powers conferred by that act, where, on their face, they apply as well to intrastate as to interstate commerce."

The game laws enacted by Congress for the protection of migratory birds were declared unconstitutional on the theory that game within the borders of a state is domestic property.

214 Fed. 154, U. S. vs. Shauver.
221 Fed. 288, U. S. vs. McCullagh.

The Federal Employers Liability Act was declared unconstitutional because Congress had no power to regulate matters purely intrastate.

207 U. S. 463, Howard vs. Illinois Central R. Co.

Decisions of this Court declaring the Civil Rights Act unconstitutional have a direct bearing upon the questions here involved.

109 U. S. 3, Roberson vs. Memphis, etc. R. Co.
230 U. S. 125, Butts vs. Merchants & Miners Trans. Co.

The Federal Futures Trading Act was declared unconstitutional because there was no limitation of the application of the tax to interstate commerce.

259 U. S. 44, Hill vs. Wallace.

It is a fundamental principle that the legislative powers of Congress are limited by constitutional grants of the States, and that all governmental powers which are not conferred upon the United States by the Constitution are reserved to the States. Domestic cattle within the State of

Georgia, feeding upon the ranges and farms of the citizens, are domestic property. In the indictment it is alleged that the employees of the Bureau of Animal Industry were in Echols County engaged in the work of "supervising the dipping of and causing to be dipped cattle." The compulsion which they were exercising by virtue of their assumed authority seems to have caused resentment and resistance on the part of the citizens. This resistance, which flared up into overt acts, constitute alleged violations of section 62 of the Penal Code. To be said to be in performance of their duties as such employees of the Bureau of Animal Industry is equivalent to saying that their presence in said county and the compulsion they were exercising upon the citizens thereof was by virtue of authority vested in them as Federal employees, and yet at the time of the commission of the overt acts they were operating under and by virtue of the authority vested in them as agents for the State of Georgia, and the resistance of the citizens was resistance to the authority of the State in the enforcement of the State Wide Tick Eradication Act, approved August 17th, 1918 (Georgia Laws 1918, p. 256). A study of the State Wide Tick Eradication Act of the State of Georgia, supra, and an examination of the evidence will show that the duties, in the performance of which the agents of the Bureau of Animal Industry were engaged at all of the times mentioned and referred to in the indictment, were duties expressly conferred upon, and with which State inspectors were charged, by the State law, and not duties with which they were charged as employees of the Bureau of Animal Industry.

But if the Act of May 29, 1884, is susceptible of two constructions, by one of which it may be held constitutional and valid, and by the other it must be held unconstitutional and void, it is the duty of the Court to place upon it that construction which will uphold it as constitutional and valid. We deem it unnecessary to cite authority in support of this proposition, which is elementary. The Act is not unconstitutional unless the only reasonable construction which can be put upon it is a construction which confers upon the em-

ployees of the Bureau of Animal Industry authority to supervise the dipping of and causing cattle to be dipped within the States, regardless of whether or not such cattle are the subjects of interstate commerce. The Act itself, properly construed, does not give to such employees any authority to enforce the disinfection and quarantine measures except where animals are subjects of interstate commerce.

47 Fed. 833, U. S. vs. Gibson.

The questions which we have discussed above were raised by the demurrer to the indictment (Record p. 9), by objections to the admission of evidence (Record p. 70), and by exceptions to the charge of the Court (Record pp. 93-96). The only question that remains is whether or not the allegations of the indictment were sufficient to bring it within the provisions of the Act of May 29, 1884, to which we have so often referred.

In the case of The Abby Dodge vs. United States, 223 U. S. 166 (4), it was held:

> "A libel charging a vessel with violating the Act of June 20th, 1906, by landing at a Florida port sponges taken by means of diving or diving apparatus from the waters of the Gulf of Mexico, or Straits of Florida, **must negative** the fact that the sponges may have been taken from waters within the territorial limits of a state."

In this connection see also:

195 Fed. 980, U. S. vs. Birdsall.
48 Fed. 554, U. S. vs. Baird.
267 Fed. 603, U. S. vs. Pittoto.
271 Fed. 795, U. S. vs. Hallowell.
277 Fed. 459, U. S. vs. Page, et al.

There is no allegation in the indictment that any rules and regulations prepared by the Secretary of Agriculture of the United States for the suppression and extirpation of infectious, contagious and communicable diseases among live

stock had been certified to the executive authority of the State of Georgia and accepted, or that the plans and methods adopted by the State of Georgia (Ga. Laws 1918, p. 256) for that purpose had been accepted by the Secretary of Agriculture of the United States. Therefore, the indictment did not show any authority in the employees of the Bureau of Animal Industry to engage or participate in the work of systematic tick eradication in Georgia.

The Circuit Court of Appeals affirmed the judgment of conviction on the theory that, inasmuch as the County of Echols in which the employees of the Bureau of Animal Industry were alleged to be engaged, is bounded on the south by a county in the State of Florida, "the supervision of the cattle complained of had a direct tendency to prevent the spread of disease into another State." If the acts of the agents and employees of the Bureau of Animal Industry can be declared to be legal on any such theory, it could as plausibly be contended that they could enter a county in the center of Georgia and exercise the same authority, on the theory that the cattle in that county would have a direct tendency to communicate a contagious disease to the cattle of an adjoining county, and that it would spread from county to county until it reached the State line. If such is the law of this country, the citizens cannot longer boast of State rights, in so far as domestic property is concerned.

We call attention to the further fact that in rendering the decision complained of, the Circuit Court of Appeals assumed that the county in Florida adjacent to Echols County was tick free, when in point of fact it was not. That Court could not take judicial cognizance of a fact which did not exist.

The questions presented are questions of gravity and importance, and, until they are definitely settled, they will arise as often as the Bureau of Animal Industry undertakes to actively engage in the work of systematic tick eradica-

tion within the states. We insist that the petition for certiorari should be granted as prayed.

Respectfully submitted.

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In the Supreme Court of the United States
October Term, 1925

No. 255

OSCAR THORNTON, SHABIE THORNTON, INMAN THORNTON *et al.*, *Petitioners*,

vs.

THE UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF OF COUNSEL FOR PETITIONERS.

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF OF COUNSEL FOR PETITIONERS.

OFFICIAL REPORT OF OPINION.

The judgment of the trial Court in this case was not officially reported. The opinion of the United States Circuit Court of Appeals for the Fifth Circuit is officially reported in 2 Fed. (2nd series), 561.

GROUNDS ON WHICH JURISDICTION INVOKED.

The petitioners were tried and convicted in the United States District Court for the Southern District of Georgia on an indictment containing two counts, in which they were charged with conspiracy to violate Section 62 of the Penal Code. The verdict was returned and judgment entered thereon March 12th, 1924 (R. 11-12). A six months' jail sentence was imposed on each of them. The judgment of the

Circuit Court of Appeals affirming the judgment of conviction was entered November 5th, 1924 (R. 64-66). The writ of certiorari was granted by this Court on March 9th, 1925 (R. 66). By their demurrer to the indictment (R. 5-11), by exception to the admission in evidence of a contract between the Chief of the Bureau of Animal Industry of the United States Department of Agriculture and the State Veterinarian for the State of Georgia (R. 38-40), and by exception to certain instructions given by the Court to the jury (R. 58-60), the petitioners raised the following questions:

1. Is the Act of May 29th, 1884, 23 Stat., sec. 32, U. S. Comp. Stat., sec. 8691, entitled "An Act for the establishment of a Bureau of Animal Industry to prevent the exportation of diseased cattle and to provide means for the prevention and extirpation of pleuro-pneumonia and other contagious diseases among domestic animals," constitutional?

2. If said Act is constitutional, does it, when properly construed, confer upon the United States Department of Agriculture authority to employ armed agents of the Bureau of Animal Industry in the disinfection and quarantine of domestic cattle in a county in Georgia, not moving or intended to move in interstate commerce, and charge such employees with the duty of supervising the dipping of and causing to be dipped such cattle under the provisions of the State-wide Tick Eradication Act?

3. Were the agents of the Bureau of Animal Industry named in the indictment charged as such by law with the duty of supervising and causing to be dipped domestic cattle in Echols County, Georgia, for the purpose of preventing the spread of splenetic fever, and in order to eradicate from tick infested cattle what is commonly known as the cattle fever tick?

4. Has the Legislature of Georgia the right by the enactment of a statute to confer upon a department of the Federal Government, or its agents, powers not given to the Federal Government by the Constitution?

5. Has the State Veterinarian for the State of Georgia the right by contract to empower the agents of a department of the Federal Government to assist the officers of the State in enforcing the State-wide Tick Eradication Act, and if such agents undertake to co-operate with the State officers in the enforcement of the State law, can they be said to be lawfully engaged in the performance of duties with which they are charged as agents of the Bureau, and entitled to the protection of the penal provisions of the Federal law enacted for the protection of agents and officers of the Government engaged in the discharge of their duties as such?

6. Did the indictment contain sufficient allegations to bring it within the provisions of the Act of Congress of May 29th, 1884, supra, and especially section three thereof, the indictment not alleging that the State of Georgia ever accepted the rules and regulations for the suppression and extirpation of infectious, contagious and communicable diseases of live stock prepared by the Secretary of Agriculture, and by him certified to the executive authority of the State, or that plans and methods for the suppression and extirpation of such diseases heretofore adopted by the State of Georgia had been accepted by the Secretary of Agriculture, and there being no allegation that the Governor, or other properly constituted authority of said State, had signified a readiness to co-operate for the extinction of contagious diseases described in the Act?

The demurrer was overruled by the Court (R. 11), the contract between the State Veterinarian and the Chief of the Bureau of Animal Industry was admitted in evidence over what we claim was a valid objection (R. 40), and exceptions to certain instructions to the jury were noted and allowed (R. 53-54). Upon said rulings and instructions assignments of error which raise the above questions are made (R. 57-60).

This Court has taken jurisdiction of the case by granting a petition for certiorari pursuant to Jud. Code, sec. 128 (Comp. Stat., sec. 1120, 26 Stat., 828), and Jud. Code, sec. 240 (Comp. Stat., sec. 1217, 26 Stat., 828). The judgment of the Circuit

Court of Appeals is made final by Jud. Code, sec. 128, and the right of certiorari is given by Jud. Code, sec. 240. The construction and constitutionality of a statute of the United States is involved, Jud. Code, sec. 238 (Comp. Stat., sec 1215, 26 Stat., 827).

STATEMENT OF THE CASE.

Twenty-one defendants, including the petitioners, were tried on an indictment charging in two counts a conspiracy to commit an offense against the United States, in that they did unlawfully, willfully and knowingly use deadly and dangereus weapons for the purpose of deterring and preventing nine named employees of the Bureau of Animal Industry of the United States Department of Agriculture from discharging their duties as such employees, the said employees being then and there charged with the duty of supervising the dipping of and causing to be dipped cattle in order to prevent the spread of splenetic fever among cattle, and in order to remove from tick infested animals what is commonly known as the cattle fever tick. In the first count of the indictment four overt acts were charged, all of which it was alleged were in the use of deadly and dangerous weapons (R. 1-4). The second count also stated substantially the same charge, with the exception that the overt acts alleged were the dynamiting and burning of cattle dipping vats and spray pens, which had been sunk, built and erected in the County of Echols, State of Georgia, and were being used by said employees of the Bureau in the discharge of their duties as such employees, and that their duties involved the use of dipping vats and spray pens (R. 4-5). A demurrer to the indictment was filed, and the Court, after hearing argument, overruled the same (R. 5-11). The jury returned a verdict finding the six petitioners guilty (R. 11) and acquitting all of the others except two, and as to them a mistrial was declared (R. 12). As already stated, each of the defendants found guilty were given a six months' jail sentence (R. 12). A writ of error was granted (R. 57), and the judgment was affirmed by the Circuit Court of Appeals (R. 64-66).

The rulings and decisions complained of are:

(a) The refusal of the trial Court to sustain the demurrer filed and urged by the defendants to the indictment (R. 5-11).

(b) The admission in evidence by the Court, over objection of counsel for the defendants, of the contract between Peter F. Bahnsen, State Veterinarian for the State of Georgia, and A. D. Melvin, Chief of the Bureau of Animal Industry, in which they undertook to provide for a plan of co-operation between the Bureau and the State Veterinarian in the eradication of the cattle tick (R. 38-40).

(c) The correctness of certain instructions to the jury, upon which error is assigned (R. 53-54).

(d) The soundness of the opinion and judgment of the Circuit Court of Appeals affirming the judgment of the District Court (R. 64-66).

In 1910 the General Assembly of the State of Georgia passed an Act creating the office of State Veterinarian in the Department of Agriculture of the State of Georgia, and defining his duties. The Act was approved August 13th, 1910 (Ga. Laws, 1910, p. 125), and the relevant parts of it are set forth in the appendix to this brief and marked exhibit "A." By this Act the State Veterinarian was charged with the duty of investigating and taking proper measures for the control and suppression of all contagious and infectious diseases among domestic animals within the State, under such rules and regulations as might be promulgated by him and approved by the Commissioner of Agriculture for the State of Georgia, and he was required to assume charge of the work of cattle tick eradication in co-operation with the Federal authorities. In 1918 there was enacted by the General Assembly of Georgia an Act to provide for state-wide tick eradication (Ga. Laws, 1918, p. 526), which Act was approved August 17th, 1918. The relevant parts of said Act are set forth in the appendix and marked exhibit "B."

Under and by virtue of the Act of August 13th, 1910, Peter F. Bahnsen became State Veterinarian for the State

of Georgia, and on June 17th, 1915, entered into an agreement with the Chief of the Bureau of Animal Industry (R. 38-40), by which it was agreed that their departments should *co-operate in the work of tick eradication in Georgia.* This work was undertaken in Echols County in 1922, and met with a great deal of opposition on the part of the citizens of the county (Evidence Peter F. Bahnsen, R. 19-21). In August, 1922, all of the employees of the Bureau of Animal Industry whose names are set out in the indictment, except two, were carried into Echols County by Dr. S. J. Horne, a veterinarian of the United States Department of Agriculture, who had charge of the entire State, with headquarters in Atlanta (R. 14-16). These employees were stationed in an armed camp known as Camp McKinnon (Evidence R. S. English, R. 24-25). These employees of the Bureau, while in Camp McKinnon, assisted the State authorities in inspecting cattle on the range and guarding dipping vats, served dipping notices (requiring the owners of cattle under compulsion of the State law to dip their cattle every fourteen days), (Evidence R. S. English, R. 25), and "assisted the State men to enforce the law getting the cattle dipped" (Evidence J. C. Jeter, R. 23, and Roy S. Richey, R. 37). The Federal agents at Camp McKinnon were armed with forty-five revolvers and riot guns (R. 37). The six defendants, who were convicted, early in September, 1922, rode by the Camp in a Ford car and cursed the Government employees, and later during the same day returned and fired in the direction of the camp with a pistol, which fire was returned by the Federal employees with automatic rifles. No one was hurt in this fusillade (Evidence R. S. English, R. 24-25).

SPECIFICATION OF ERRORS ASSIGNED.

The first assignment of error (R. 57) challenges the correctness of the judgment of the Court overruling the demurrer to the indictment and each count thereof. The grounds of the demurrer to the first count of the indictment were:

"1. Because no crime against the laws of the United States is charged in said count against these defendants, or either of them.

"2. Because it appears from the allegations in said count that the duties with which the employees of the Bureau of Animal Industry whose names are set out therein were charged, and in the performance of which they are alleged to have been engaged at the time the several overt acts are alleged to have been committed, to wit: supervising of and causing to be dipped cattle, were not duties with which they were legally charged as such employees of the Bureau of Animal Industry, nor were they such duties as they could legally perform as such employees.

"3. Because in said count the defendants are charged with having conspired to commit an offense against the United States, and that, in furtherance of the conspiracy, they committed the various overt acts therein set forth for the purpose of deterring and preventing the alleged employees of the Bureau of Animal Industry of the United States Department of Agriculture from discharging their duties as such, to wit: causing cattle to be dipped for the purpose therein alleged, whereas, under the law, said alleged employees of the Bureau of Animal Industry were not charged with such duty and could not legally perform the same in the State of Georgia.

"4. Because there is no law vesting in said alleged employees of the Bureau of Animal Industry of the United States Department of Agriculture, as such, authority to perform the duties with which it is alleged they were charged, and in the performance of which it is alleged they were engaged at the time the several overt acts were committed for the purpose in said count set out.

"5. Because it is not alleged in said count that the State of Georgia ever accepted rules and regulations

for the suppression and extirpation of contagious, infectious and communicable diseases among live stock prepared by the Secretary of Agriculture and by him certified to the executive authority of said State, or that the plans and methods for the suppression and extirpation of said diseases heretofore adopted by the State of Georgia have been accepted by the Secretary of Agriculture. Nor is it alleged in said count that the Governor, or other properly constituted authority of the State of Georgia, has signified a readiness to co-operate for the extinction of any such disease, in conformity with the provisions of the Act of Congress of May 29th, 1884, entitled 'An Act for the Establishment of a Bureau of Animal Industry, etc.' (23 Stat., sec. 32, U. S. Comp. Stat., sec. 8691), and especially of section three thereof. Therefore, it is not shown by the allegations in said count that the alleged employees of the Bureau of Animal Industry had any right or authority to supervise the dipping of cattle, or to cause cattle to be dipped in said State, for the purpose in said count set out.

"6. Because said count of said indictment, and the matters and things therein set forth, do not show or state that the cattle, the dipping of which the employees of the Bureau of Animal Industry of the United States Department of Agriculture were supervising and causing to be done in order to prevent the spread of splenetic fever among cattle, and in order to eradicate and remove from them what is commonly known as the cattle fever tick, were subjects of interstate commerce, or that said cattle had in any way become subject to the supervision or control or power of Congress under the Constitution.

"7. Because the Act of Congress, approved May 29th, 1884, entitled 'An Act for the Establishment of a Bureau of Animal Industry, etc.,' under and by virtue of which the employees of the Bureau of Animal Industry of the United States Department of Agriculture are alleged to have been charged with the duty of supervising the dip-

ping of and causing to be dipped cattle, and under and by virtue of which said employees were supervising the dipping of and causing to be dipped cattle mentioned in said indictment, is unconstitutional, in that said Act, and especially section three thereof, attempts to give to the Secretary of Agriculture the authority to spend so much of the money appropriated by said Act as may be necessary in such investigations and in such disinfection and quarantine measures as may be necessary to prevent the spread of diseases, to wit: 'contagious, infectious and communicable diseases' among cattle from one state or territory into another, whereas, the State of Georgia did not delegate to the United States by the Constitution any right of supervision of or any power over the work of disinfection and quarantine of cattle within the State of Georgia, except when said cattle shall have, at any time, become subjects of interstate commerce, and said Act seeks to delegate to the Secretary of Agriculture, and through him to the employees of the Bureau of Animal Industry of the United States Department of Agriculture, rights, powers and duties, which were reserved to the states and to the State of Georgia and were not delegated as aforesaid to the United States or to the Congress thereof, or to any of the officers who derive their authority and exercise their offices and perform their duties under and by virtue of any law passed by the Congress of the United States.

"8. Because the Act of Congress, approved May 29th, 1884, entitled 'An Act for the Establishment of a Bureau of Animal Industry, etc.,' which Act, by section three thereof, gives to the Secretary of Agriculture authority to spend so much of the money appropriated by said Act as may be necessary in such investigations and in such disinfection and quarantine measures as may be necessary to prevent the spread of diseases, to wit: contagious, infectious and communicable diseases among cattle from one state or territory into another, does not vest in the Secretary of Agriculture of the United States, or

in the Bureau of Animal Industry mentioned in said count of said indictment authority to appoint agents and employees and to charge them with the duty of supervising and dipping and causing to be dipped cattle, and in order to eradicate and remove from tick infested areas what is commonly known as the cattle fever tick, and therefore the employees of the Bureau of Animal Industry of the United States Department of Agriculture named and mentioned in said count of said indictment were not, at the time mentioned in said count of said indictment when the defendants are alleged to have committed the offenses charged therein, officers or employees of the Bureau of Animal Industry of the United States Department of Agriculture, engaged in the execution of their duties as such legally delegated to them, nor were said acts of the defendants charged in said count of said indictment committed on account of the execution of their legally delegated duties."

The separate grounds of demurrer to the second count of the indictment are identical with those above quoted and urged to the first count, except there is an additional ground thereto, as follows:

"Because no duty with which the alleged employees of the Bureau of Animal Industry were legally charged required the use by them of dipping vats and spray pens."

The second assignment of error (R. 58) is upon the admission in evidence, over the defendants' objection, of the contract between the Chief of the Bureau of Animal Industry and the State Veterinarian, dated June 17th, 1915, which contract purports to provide for a plan of co-operation between the Bureau and the State Veterinarian for the eradication of the cattle tick in Georgia, said contract being, as we contend, erroneously admitted in evidence by the Court, (a) because the State Veterinarian was not authorized under the law to make any such contract with the Chief of the Bureau of Animal Industry; (b) because there is nothing in the indictment which charges that the work of tick eradication in Echols

County, Georgia, was proceeding under the Act of Congress of May 29th, 1884, at the time of the acts alleged to have been committed by the defendants, and there is nothing in said indictment which charges that there had been any contract or agreement between the State of Georgia, or any authority of the State, and the Department of Agriculture of the United States; and (c) because the Department of Agriculture of the State of Georgia has no authority under the law to make such a contract, and the employees of the Bureau of Animal Industry were not authorized under the law to perform the duties set forth in the contract, if it was made as appears from the memorandum of agreement admitted in evidence.

The third assignment of error (R. 58) is upon the following charge of the Court:

> "I have determined and so charge you that the employment of men by the Federal authorities, acting through the Department of Agriculture, in the enforcement of this dipping law, in co-operation with the authorities of the State of Georgia, is valid; so you need not concern yourselves further in this case with what you think one way or the other as to the wisdom of the law, the rightfulness of the law, or the constitutionality of the law. I charge you it is a valid law, and it is your duty to accept that as being correct."

Error is assigned, because (a) there is no authority of law for the Bureau of Animal Industry to engage in and carry on the work of dipping and disinfection of domestic cattle in the State of Georgia for the purpose of eradicating the cattle tick, in co-operation with the authorities of the State, or otherwise; and (b) the Federal officers and employees of the Bureau of Animal Industry have no authority to engage in the enforcement of the state-wide tick eradication law.

The fourth assignment of error (R. 59) is upon the following charge of the Court:

> "It could be shown to you, were it necessary to make a review of it, that from the beginning of the Act of Con-

gress of 1884, through the several Acts of the State of Georgia, under which this contract was made that has been introduced to you, that there has been manifested, not, gentlemen, an invasion of the rights of the State of Georgia, or its citizens on the part of the United States Government,—not that—and while this is not at all essential to the determination of the case, you will find throughout that there is a mutuality of evidence, and evidence on both sides, of an intention to have mutual co-operation; that the Federal employees were here acting under and by virtue of a contract made by the State of Georgia, through an officer who was in terms authorized by the State of Georgia to make such a contract—not the contract in terms, but a contract to carry that into effect. If, therefore, you believe that all or some of those named employees—these employees who are named in the indictment—engaged in the enforcement of the cattle dipping law, you will believe that they were lawfully engaged as employees or agents of the Government of the United States to this effect: 'whoever shall forcibly assault, resist, oppose, prevent, impede or interfere with any officer or employee of the Bureau of Animal Industry of the Department of Agriculture in the execution of his duties shall be punished as stated,' and 'whoever shall use any deadly or dangerous weapon in resisting any officer or employee of the Bureau of Animal Industry of the Department of Agriculture in the execution of his duties with the intent to commit bodily injury upon him or to deter or prevent him from discharging his duties, or on account of the performance of his duties' shall be punished. Now that is the fundamental law upon which is applied the law of conspiracy, which is this: 'If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as stated in the statute'."

Error is assigned, because (a) the Federal employees named in the indictment were not lawfully charged as such with the enforcement of the State law, and (b) there is no authority of law for the Bureau of Animal Industry to engage in and carry on the work of dipping and disinfection of domestic cattle in the State of Georgia, for the purpose of eradicating the cattle tick, in co-operation with the authorities of the State, or otherwise.

The fifth assignment of error (R. 60) is upon the following instruction given by the Court to the jury:

> "Gentlemen, I charge you this: that the arrangement made between the United States through its Department of Agriculture and the State of Georgia made through its State Veterinarian, as set forth in this contract which has been introduced in evidence, and the employment of agents to carry that out, as indicated in the contract, is valid."

Error is assigned, because (a) the arrangement between the United States through its Department of Agriculture, and the State of Georgia, through its State Veterinarian, as set forth in the contract referred to, is as a matter of law invalid; and (b) the employment of agents to carry out said contract was without authority of law and illegal.

ARGUMENT AND AUTHORITIES.

It will be observed that the duties which the employees of the Bureau of Animal Industry named in the indictment were performing in Echols County, Georgia, were duties incident to the systematic work of disinfecting the cattle in that county, said work of disinfection being carried on under the supervision of and by compulsion of those employees, and consisting of the dipping and spraying of cattle, which were domestic property of the citizens of that county and which were in no way the subject of interstate commerce.

In order that the obvious errors in the judgment overruling the demurrer, in admitting in evidence the contract be-

tween the Chief of the Bureau of Animal Industry and the State Veterinarian of June 17th, 1915, and the instructions to the jury of which complaint is made, may be more clearly understood, it is perhaps well for us to call attention to certain parts of the evidence which show what work the employees of the Bureau of Animal Industry were engaged in in Echols County and what duties they were performing at the time it is alleged they were assaulted and interfered with.

S. J. Horne, a witness for the Government, testified (R. 16):

"I took into Echols County, early in August, 1922, all the employees of the Bureau of Animal Industry whose names are set out in the indictment except two * * * * * Lofton and Peterson, local parties, I think, were employed sometime in the spring of 1922 by the Bureau of Animal Industry. They were not on this job in August, at all. They were range riders and guarding vats. After these other gentlemen (the nine employees of the Bureau of Animal Industry mentioned in the indictment) came and the McKinnon vat could be constructed they were in the discharge of duties as range riders in Echols County. These men did not gather up cattle so much as they did supervising and dipping and making inspection of the range to see that they had all been dipped. On these inspections of the range, if they found one (meaning a cow) that wasn't paint marked, it was driven in by them.

"As the cattle were dipped they were marked with paint to distinguish between those that were dipped and those that were not. Seizure and impounding cattle was carried on in co-operation with the state inspector when it was found that they had not been dipped. It was carried on in connection with the two." Q. "They did the actual work of seizure?" A. "Yes, sir, they did, assisting with the other. I judge that they also at times performed the duties of notifying the owners of cattle when they were impounded."

T. H. Applewhite, a witness for the Government, testified (R. 18):

"The duties of these gentlemen named and described in this indictment as employees of the Bureau of Animal Industry were to assist the state employees in carrying on the work—they all did practically the same thing, more or less. * * * The range riders impounded the cattle which were found on the range that did not bear paint marks. These range riders included the employees of the Bureau of Animal Industry and the state men."

(R. 18-19) "It was in August, 1922, we carried these men (meaning the nine employees of the Bureau of Animal Industry) down there and established a camp called McKinnon camp, where the men lived in tents."

W. D. Counts, a witness for the Government, testified (R. 21):

"I was employed by the Government as an agent in tick eradication. My duties were to enforce the law. I was engaged in riding the range and looking after cattle which had not been dipped."

J. C. Jeter, a witness for the Government, testified (R. 24):

"The inspectors employed by the County Commissioners with the approval of Dr. Bahnsen and these government men whose names are set out in this indictment all performed the same duties. This batch of papers here are dipping notices signed and sent out by me. These notices were served by these government men as well as by the state men. Similar notices were sent to the cattle owners."

R. S. English, a witness for the Government, testified (R. 25):

"My duties were simply as a range rider to assist the state authorities in inspecting cattle on the range. I rode the range, inspected cattle and guarded dipping

vats. I also served dipping notices. My purpose in inspecting cattle on the range was to see that they had been dipped."

Roy S. Ritchey, a witness for the Government, testified (R. 37):

"There were some ten or twelve Bureau of Animal Industry men employed at Camp McKinnon. We had forty-five revolvers and also some riot guns. We had received instructions from Dr. Horne to use the guns only in self-defense. I was discharging the duties of a range rider and on the occasion of trips on the range we carried these revolvers."

On page 52 of the record there appears a dipping notice similar to the one served on the owners of cattle in Echols County by the employees of the Bureau of Animal Industry. This dipping notice is as follows:

"State of Georgia
Department of Agriculture
Bureau of Live Stock Industry
Dipping Notice

County: Echols. Original No. 79349.

Mr. D. D. Daniels. Address: Statenville, Ga.

Complying with the provisions of Sec. 4 of the Statewide Tick Eradication Act of 1918, you are hereby notified to have all of your cattle at McKinnon vat, dipping vat, for disinfection under official supervision on 24th day of August, 1922, and every fourteen days thereafter until further and otherwise notified. The law makes dipping compulsory. Should you fail to dip your cattle, the law provides that the cattle be dipped and quarantined at your expense. The law further provides that, if necessary, the cattle be sold to cover the cost incident to such quarantine and dipping. This 23rd day of August, 1922.

(Signed) J. C. JETER,
Cattle Inspector."

At Statenville, Ga.

From this evidence it appears that the nine named employees of the Bureau of Animal Industry, who it is alleged were discharging certain duties in Echols County and were interfered with in the discharge of such duties, established an armed camp in Echols County, Georgia. They served notices on the owners of cattle to bring their cattle to certain dipping vats and dip them. They marked with paint the cattle which were dipped. They rode the range and seized and impounded the cattle not so marked and did all of the work which the state law provides should be done in the systematic eradication of the cattle tick in Georgia. There was no shipment of cattle from Echols County. The cattle were not moved in or intended for interstate commerce, and that they were the subjects of such commerce is not even remotely suggested. The presence of the nine employees of the Bureau of Animal Industry in Echols County was solely for the purpose of enforcing the state tick eradication law.

Section 3 of the Act of Congress of May 29th, 1884, entitled "An Act for the establishment of a Bureau of Animal Industry to prevent the exportation of diseased cattle, and to provide means for the suppression and extirpation of pleuropneumonia and other contagious diseases among domestic animals," is the portion of the Act by virtue of which it is insisted by the Government that the employees of the Bureau were in Echols County and were engaged in the work of supervising the dipping of and causing to be dipped cattle, in order to prevent the spread of splenetic fever among cattle, and in order to eradicate from tick infested animals what is commonly known as the cattle fever tick. That section is as follows:

> "That it shall be the duty of the Commissioner of Agriculture to prepare such rules and regulations as he may deem necessary for the speedy and effectual suppression and extirpation of said diseases, and to certify such rules and regulations to the executive authority of each State and Territory, and invite said authorities to cooperate in the execution and enforcement of this act.

Whenever the plans and methods of the Commissioner of Agriculture shall be accepted by any State or Territory in which pleuro-pneumonia or other contagious, infectious, or communicable disease is declared to exist, or such State or Territory shall have adopted plans and methods for the suppression and extirpation of said diseases, and such plans and methods shall be accepted by the Commissioner of Agriculture, and whenever the governor of a State or other properly constituted authorities signify their readiness to co-operate for the extinction of any contagious, infectious, or communicable disease in conformity with the provisions of this act, the Commissioner of Agriculture is hereby authorized to expend so much of the money appropriated by this act as may be necessary in such investigations, and in such disinfection and quarantine measures as may be necessary to prevent the spread of the disease from one State or Territory into another."

That section, when read in the light of the entire Act (Fed. Stat. Ann., 406), plainly has as its purpose co-operation with the State authorities on the part of the Bureau of Animal Industry in an advisory way, in so far as the work of extirpating the cattle tick from domestic animals is concerned. The Commissioner of Agriculture was charged with the duty of investigation, the compilation of statistics, and the ascertainment of the causes and the cures for contagious diseases among domestic animals, and with the duty of passing the information on to the State authorities. He was further charged with the duty of assisting the State authorities in an advisory capacity in the work of extirpating the cattle tick and other contagious diseases among domestic animals. So long as a contagious disease was confined to the cattle of one particular State, and the work to be done was simply the extirpation of the cattle tick with which domestic cattle of that State were infested, this Act and all other Acts of Congress could give no authority to the employees of the Bureau of Animal Industry to engage in the work of supervising the dipping of and causing cattle to be dipped. To do so would

be a palpable invasion of the rights of the states, and the employees of the Bureau would be engaged in a work which was peculiarly within the scope of the duties of the State agents.

Sec. 3, quoted above, provides that the Commissioner of Agriculture shall prepare rules and regulations as his investigation indicates will be effective for the suppression and extirpation of infectious and contagious diseases among cattle, and he is charged with the duty of certifying these rules and regulations to the executive authorities of the states, and of inviting the executive authorities to co-operate in the enforcement and execution of these rules. It also provides that when the plans of the Commissinoer shall have been accepted by any particular State, or when any particular State formulates plans of its own and such plans and methods are acceptable to him, and the Governor of the State signifies his willingness to co-operate with the Commissioner for the extirpation of any contagious disease among cattle, the said "*Commissioner of Agriculture is hereby authorized to expend so much of the money appropriated by this Act as may be necessary in such investigation and in such disinfection and quarantine measures as may be necessary to prevent the spread of the disease from one state or territory into another.*" The legislative intent is clearly indicated by the last few words of the section. The Commissioner of Agriculture was authorized to spend the money on a thorough investigation of the causes and cures of contagious diseases among cattle. He was, however, authorized to spend said appropriation in measures of disinfection and quarantine only when a disease was to be confined within any particular State. If, upon investigation, a contagious, infectious or communicable disease among live stock is found to exist in a State, or some part thereof, the Secretary of Agriculture of the United States may quarantine the infested territory and prevent the interstate movement of diseased animals only upon compliance with such rules and regulations as he may prescribe, but he can not legally engage in the work of dipping and disinfecting animals while confined to a particular State. It is

only when such animals are moving, or offered for movement, from one state or territory into another that he, through the agents and representatives of his department, can lawfully engage in the work of dipping and disinfection.

Section 5 of the Act approved March 3rd, 1905, entitled "An Act to enable the Secretary of Agriculture to establish and maintain quarantine districts, to permit and regulate the movement of cattle and other live stock therefrom, and for other purposes," (Penal Code, sec. 62, U. S. Comp. Stat., sec. 10230) provides:

> "That every person who forcibly assaults, resists, opposes, prevents, impedes, or interferes with any officer or employee of the Bureau of Animal Industry of the United States Department of Agriculture in the execution of his duties, or on account of the execution of his duties, shall be fined not less than one hundred dollars nor more than one thousand dollars, or be imprisoned not less than one month nor more than one year, or by both such fine and imprisonment; and every person who discharges any deadly weapon at any officer or employee of the Bureau of Animal Industry of the United States Department of Agriculture, or uses any dangerous or deadly weapon in resisting him in the execution of his duties, with intent to commit a bodily injury upon him or to deter or prevent him from discharging his duties, or on account of the performance of his duties, shall, upon conviction, be imprisoned at hard labor for a term not more than five years or fined not to exceed one thousand dollars."

Thus a penalty for any interference with any officer or employee of the Bureau of Animal Industry *in the execution of his duties, or on account of the execution of his duties*, was imposed. It was under section 3 of the Act of May 29th, 1884, and section 5 of the Act of March 3rd, 1905, that the defendants were indicted and tried, and the very essence of the offense is the charge that the employees of the Bureau of Animal Industry who were interfered with were, at the time of said interference, lawfully engaged in a duty with which

they were lawfully charged, and that duty in which they were engaged was, according to the allegations of the indictment, the supervising the dipping of and causing to be dipped cattle in Echols County. Not one word in the indictment indicates that the work they were doing was necessary to prevent the spread of contagious diseases from one State to another. The indictment does not charge that the cattle which were being dipped had become the subjects of, or were even intended for interstate commerce.

It would appear from one of the allegations in the indictment that the Federal agents who had organized Camp McKinnon, in the heart of Echols County, were engaged in the dipping of, and were by compulsion causing the citizens of the county to dip their cattle, not for the purpose, in so far as the indictment discloses, of preventing the spread of disease from one State to another, but, according to the allegations made, to prevent the spread of splenetic fever among cattle,—that is, among cattle in Echols County, and, as the indictment further alleged "in order to eradicate and remove from tick infested animals what is commonly known as the cattle fever tick." There is nothing in the Act establishing the Bureau of Animal Industry which charges the employees of the Bureau with the performance of the duties which the indictment alleged they were engaged in at the time the overt acts are alleged to have been committed. If said employees were in Echols County using compulsion and force (and the word "causing" implies that) to require the citizens of that county to dip their cattle, they were engaged in the work of usurpation of authority and of tyranny, and it was not the intention of Congress in passing the Act of March 3rd, 1905 to *penalize the lawful resistance to the exercise of unlawful authority.* If, by the Act of May 29th, 1884, establishing the Bureau of Animal Industry, it was the intention of Congress to confer upon the Secretary of Agriculture authority to send agents and employees of the Bureau into the borders of any State in the Union and empower them to supervise the dipping and by compulsion and force cause domestic cattle to be dipped, the Act must be held unconstitutional and

void. In this connection we respectfully ask a careful c
sideration of the following authorities which are, in our op
ion, controlling upon that question.

128 U. S. 1, Kidd vs. Pearson.

85 Fed. 425, U. S. vs. Boyer.

154 U. S. 210, Covington, etc., Bridge Co. vs. K
tucky.

10 Wall. 557, In re: The Daniel Ball.

116 U. S. 517, Coe vs. Errol.

52 Fed. 113, In re: Greene.

9 Wheat. 1, Gibbons vs. Ogden.

In Kidd vs. Pearson, 128 U. S. 1, supra, Mr. Justice Lam
said:

"No distinction is more popular to the common mind
or more clearly expressed in economic and political litera
ture, than that between manufactures and commerce
Manufacture is transformation,— the fashioning of raw
materials into a change of form for use. The buying and
selling and the transportation incidental thereto consti
tute commerce; and the regulation of commerce in the
constitutional sense embraces the regulation, at least, o
such transportation. The legal definition of the term as
given by this court in County of Mobile vs. Kimball, 10
U. S. 691, 702, is as follows: 'Commerce with foreign
nations and among the states, strictly considered, con
sist in intercourse and traffic, including in these terms
navigation and the transportation and transit of persons
and property, as well as the purchase, sale and exchange
of commodities.' If it be held that the term includes the
regulation of all such manufactures as are intended to be
the subject of commercial transactions in the future, it is
impossible to deny that it would also include all produc
tive industries that contemplate the same thing. The re
sult would be that congress would be invested, to the ex
clusion of the states, with the power to regulate, no

only manufacture, but also agriculture, horticulture, stock raising, domestic fisheries, mining—in short, every branch of human industry. For is there one of them that does not contemplate, more or less clearly, an interstate or foreign market? Does not the wheat grower of the Northwest, and the cotton planter of the South, plant, cultivate and harvest his crop with an eye on the prices at Liverpool, New York and Chicago? The power being vested in Congress, and denied to the states, it would follow as an inevitable result, that the duty would devolve on Congress to regulate all of these delicate, multiform and vital interests—interests which in their nature are, and must be, local in all the details of their successful management. It is not necessary to enlarge on, but only to suggest, the impracticability of such a scheme, when we regard the multitudinous affairs involved and the almost infinite variety of their minute details."

While the decision in United States vs. Boyer, supra, was by a District Judge, it is quite evident that the learned jurist who decided that case made a careful study of the question there presented and which is directly involved in the instant case. He concluded: (a) That the crime of bribery could not be predicated upon the offer of a reward not to perform duties for the performance of which there was no legal or constitutional warrant; and (b) That the killing of cattle and the preparation of their carcasses for shipment in interstate commerce was not interstate commerce, and that the employees of the Bureau of Animal Industry engaged in the work of inspecting cattle which had been slaughtered and were being packed preparatory to being shipped in interstate commerce were not engaged in the performance of duties of inspection legally conferred upon them, and that the Act of Congress found in 1st Supp. Rev. Stat. 937, and 2nd Supp. Rev. Stat. 403, whereby the Secretary of Agriculture was empowered to have made a careful inspection of cattle, sheep and hogs at slaughter houses located in the several states, which were about to be slaughtered, the products of which

were intended for sale in other states or foreign countries, was unconstitutional.

> "The buying of grain within a State for shipment to markets in other States constitutes interstate commerce *if followed by shipments into other States.*" (Italics ours.)
>
> Sup. Ct. Advance Opinions, June 1, 1925, 554, Shafer vs. Farmers Grain Co.

We take it that no one will seriously contend that the power claimed in the instant case was conferred upon Congress by the general welfare clause of the Constitution, because it contains no power of itself to enact any legislation, but according to the most liberal view is only a limitation on the taxing power of the United States. Does the power then "to regulate commerce with foreign nations and among the several states and with the Indian tribes" embrace the power to send inspectors within a state to supervise the dipping of and cause cattle to be dipped when they are not subjects of interstate commerce, or intended for interstate commerce? Most assuredly not.

> 85 Fed. 425, U. S. vs. Boyer.

If it was the intention of Congress to confer, by the Act of May 29th, 1884, authority upon the agents and employees of the Bureau of Animal Industry to go within the borders of a state and supervise the dipping of and cause cattle to be dipped, irrespective of whether or not they were the subjects of interstate commerce, the Act is void. In Illinois Central Railroad Co. vs. McKendree, 203 U. S. 514 (51 L. Ed. 298), it was held:

> "Quarantine regulations promulgated by the Secretary of Agriculture acting under cover of the Act of February 2, 1903, entitled 'An Act to Enable the Secretary of Agriculture to More Effectually Suppress and Prevent the Spread of Contagious and Infectious Diseases of Live Stock, and for Other Purposes,' are void as in excess of

the powers conferred by that act, where, on their face, they apply as well to intrastate as to interstate commerce."

The game laws enacted by Congress for the protection of migratory birds were declared unconstitutional on the theory that game within the borders of a state is domestic property.

214 Fed. 154, U. S. vs. Shauver.

221 Fed. 288, U. S. vs. McCullagh.

The Federal Employers Liability Act was declared unconstitutional because Congress had no power to regulate matters purely intrastate.

207 U. S. 463, Howard vs. Illinois Central R. Co.

Decisions of this Court declaring the Civil Rights Act unconstitutional have a direct bearing upon the questions here involved.

109 U. S. 3, Roberson vs. Memphis, etc. R. Co.

230 U. S. 125, Butts vs. Merchants & Miners Trans. Co.

The Federal Futures Trading Act was declared unconstitutional because there was no limitation of the application of the tax to interstate commerce.

259 U. S. 44, Hill vs. Wallace.

It is a fundamental principle that the legislative powers of Congress are limited by constitutional grants of the States, and that all governmental powers which are not conferred upon the United States by the Constitution are reserved to the States.

In Linder vs. United States, Supreme Court Advance Opinions May 1, 1925, 489, this Court held:

"Congress can not, under the pretext of executing delegated power, pass laws for the accomplishment of objects not intrusted to the Federal Government.

"Any provision of an Act of Congress ostensibly enacted under power granted by the Constitution, not naturally or reasonably adapted to the effective exercise of such power, but solely to the achievement of something plainly within the power reserved to the States, is invalid, and can not be enforced."

In Briscoe vs. Bank of Kentucky, 11 Peters, 257 (9 L. Ed. 709), it was held:

"All powers not delegated to the Federal Government or inhibited to the States in the Federal Constitution are reserved to the States or the people."

To the same effect is,

1 Wheat. 304 (4 L. Ed. 97), Martin vs. Hunter.

"Every State possesses exclusive jurisdiction and sovereignty over person and property within its territory."

95 U. S. 714 (24 L. Ed. 565), Pennoyer vs. Neff.

"Sovereignty is with the people, not with any agency of the Government."

Watson on the Constitution, p. 1250.

"No compact between a State and the United States can enlarge or diminish constitutional rights."

3 How. 212 (11 L. Ed. 565), Pollard vs. Hogan.

"All those powers which relate to municipal litigation, or which may more properly be called internal police, are not surrendered or restrained; and, consequently, in relation to these, the authority of the State is complete, unqualified and exclusive."

11 Pet. 102 (97 L. Ed. 648), Mayor, etc. of New York vs. Miln.

"The Legislature of a State possesses only those at-

tributes of sovereignty which have been delegated to it by the people of a State and its Constitution."

11 Pet. 420 (9 L. Ed. 773), Charles River Bridge vs. Warren Bridge.

3 Dall. 386 (1 L. Ed. 648), Calder vs. Bull.

16 Wall. 667 (21 L. Ed. 375), Chicago B. & Q. R. Co. vs. Otoe Co.

6 Cranch 87 (31 L. Ed. 162), Fletcher vs. Peak.

In the light of these authorities it seems quite clear that Congress did not have the power to confer upon the Commissioner of Agriculture authority to send agents of the Bureau of Animal Industry into a State and engage in the work of dipping and disinfection of domestic cattle, and if such was the intention of Congress, the Act of May 29th, 1884, establishing the Bureau is unconstitutional. And since "no compact between a State and the United States can enlarge or diminish constitutional rights," such authority can not be claimed under the agreement between the Chief of the Bureau and the State Veterinarian, entered into on June 17th, 1915.

Domestic cattle within the State of Georgia, feeding upon the ranges and farms of their owners, are domestic property. In the indictment it is alleged that the employees of the Bureau of Animal Industry were in Echols County engaged in the work of "supervising the dipping of and causing to be dipped cattle." The compulsion which they were exercising by virtue of their assumed authority seems to have caused resentment and resistance on the part of the citizens. This resistance, which flared up into overt acts, constitute alleged violations of section 62 of the Penal Code. To be said to be in performance of their duties as such employees is equivalent to saying that their presence in Echols County and the compulsion they were exercising upon the citizens thereof was by virtue of authority vested in them as Federal employees, and yet at the time of the commission of the overt acts they were operating under and by virtue of the authority vested in them as agents of the State of Georgia, and the resistance

of the citizens was resistance to the authority of the State in the enforcement of the State-wide Tick Eradication Act, approved August 17th, 1918. A study of that Act and an examination of the evidence will show that the duties, in the performance of which the agents of the Bureau of Animal Industry were engaged at all of the times mentioned and referred to in the indictment and shown by the evidence, were duties expressly conferred upon State inspectors and with which they were charged by the State law, and not duties with which they were charged as employees of the Bureau of Animal Industry.

But if the Act of May 29th, 1884, is susceptible of two constructions, by one of which it may be held constitutional and valid, and by the other it must be held unconstitutional and void, it is the duty of the courts to place upon it that construction which will uphold it.

In Linder vs. United States, supra, this Court held:

> "A statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional, but also grave doubts upon that score."

In our opinion the only construction that can be given the Act of May 29th, 1884, which will avoid the conclusion that it is unconstitutional is that it does not confer upon the Secretary of Agriculture the right to place armed agents within the borders of a State for the purpose of carrying on the work of dipping and disinfecting domestic cattle not moving in, or intended for interstate commerce. The Act itself, properly construed, does not give to such employees any authority to enforce the disinfection and quarantine measures except where animals are subjects of interstate commerce.

47 Fed. 833, U. S. vs. Gibson.

The only question that remains is whether or not the allegations of the indictment were sufficient to bring it within the provisions of the Act of May 29th, 1884, to which we have so often referred.

In the case of The Abby Dodge vs. United States, 223 U. S. 166 (4), it was held:

> "A libel charging a vessel with violating the Act of June 20th, 1906, by landing at a Florida port sponges taken by means of diving or diving apparatus from the waters of the Gulf of Mexico, or Straits of Florida, must negative the fact that the sponges may have been taken from waters within the territorial limits of a state."

See also:

195 Fed. 980, U. S. vs. Birdsall.

48 Fed. 554, U. S. vs. Baird.

267 Fed. 603, U. S. vs. Pittoto.

271 Fed. 795, U. S. vs. Hallowell.

277 Fed. 459, U. S. vs. Page et al.

There is no allegation in the indictment that any rules and regulations prepared by the Secretary of Agriculture of the United States for the suppression and extirpation of infectious, contagious and communicable diseases among live stock had been certified to the executive authority of the State of Georgia and accepted, or that the plans and methods adopted by the State of Georgia (Ga. Laws 1918, p. 256) for that purpose had been accepted by the Secretary of Agriculture of the United States. Therefore, the indictment did not show any authority in the employees of the Bureau of Animal Industry to engage or participate in the work of systematic tick eradication in Georgia.

The Circuit Court of Appeals affirmed the judgment of conviction on the theory that inasmuch as the County of Echols, in which the employees of the Bureau of Animal Industry were alleged to be engaged, is a border county bounded on the south by a county in Forida, "the supervision of the cattle complained of had a direct tendency to prevent the spread of disease into another State." If the acts of the agents and employees of the Bureau of Animal Industry can be declared to be legal on any such theory, it could as plausibly

be contended that they could enter a county in the center of Georgia and exercise the same authority, on the theory that the cattle in that county would have a direct tendency to communicate a contagious disease to the cattle of an adjoining county, and that it would spread from county to county until it reached the State line. If such is the law of this country, the citizens can not longer boast of State rights, in so far as domestic property is concerned. Surely Congress had no such thing in mind.

We call attention to the further fact that in rendering the decision complained of, the Circuit Court of Appeals assumed that the county in Florida adjacent to Echols County was tick free, when in point of fact it was not. That Court could not take judicial cognizance of a fact which did not exist.

In conclusion we urge and insist upon all of the assignments of error, and respectfully submit that the demurrer was improperly overruled, that the contract between the State Veterinarian and the Chief of the Bureau of Animal Industry of June 17th, 1915, was improperly admitted in evidence, and that the instructions complained of embodied incorrect principles of law and were erroneous. For all of these reasons the defendants convicted are entitled to a reversal of the judgment.

Respectfully submitted,

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APPENDIX.

Exhibit "A."

Relevant Parts of Act of General Assembly of Georgia, creating the Office of State Veterinarian and defining his Powers (Ga. Laws 1910, p. 125).

Section 1. Be it enacted by the General Assembly of Georgia, and it is hereby enacted by the power of the same, That the office of State Veterinarian in the Georgia State Department of Agriculture be, and is hereby created, and that the Commissioner of Agriculture be, and is hereby authorized to appoint a competent and qualified Veterinarian (who must receive the endorsement of the Georgia State Board of Veterinary Examiners) to fill this position under the title of "State Veterinarian," such officer to continue in office during good behavior and the proper performance of his duties.

Sec. 2. Be it further enacted by the authority aforesaid, That the duties of the State Veterinarian shall be to investigate and take proper measures for the control and suppression of all contagious and infectious diseases among the domesticated animals within the State, under such rules and regulations as may be promulgated by him and approved by the Commissioner of Agriculture of Georgia; he shall assume charge of the work of cattle tick eradication in co-operation with the Federal authorities and shall devote his whole time to the improvement of the live stock industry of the State, and he shall make report upon his work annually, the same to be published in the annual report of the Commissioner of Agriculture.

Sec. 3. Be it further enacted by the authority aforesaid, That the salary of said State Veterinarian shall be twenty-five hundred dollars per annum ($2,500.00), and he shall in addition be reimbursed his actual traveling expenses incurred while traveling in the service of the State in the regular discharge of his duties.

Exhibit "B."

Relevant Parts State-wide Tick Eradication Act (Ga. Laws, 1918, p. 526).

Section 1. Be it enacted by the General Assembly of the State of Georgia, and it is hereby enacted by the authority of the same, That from and after the passage of this Act, the movement of cattle infested with the cattle fever tick (margaropus annulatus) into, within or through the State of Georgia at any time or for any purpose, except as hereinafter provided, shall be and the same is hereby prohibited.

Sec. 2. Be it further enacted that on or before the first day of April, 1919, the ordinary, county commissioners or officers in charge of the county affairs in each and every county where tick eradication has not been completed, shall construct such number of dipping vats as may be fixed by the State Veterinarian, or his authority, and provide the proper chemicals and other materials necessary to be used in the systematic work of tick eradiction in such counties, which shall begin on said date or such subsequent date as may be fixed by the State Veterinarian, with the approval of the Commissioner of Agriculture. If the ordinary, county commissioners or officials in charge of county affairs of any county shall fail or refuse or neglect to comply with the provisions of this Act on or before the first day of April, 1919, the State Veterinarian shall apply to any court of competent jurisdiction for writ of mandamus, or shall institute other legal proceedings as may be necessary and proper to compel such official to comply with the provisions of this Act.

Sec. 3. Be it further enacted, That the several counties shall provide and pay the salaries of the necessary number of local county inspectors, or agents, to assist in this work, who shall be appointed by the county officials in charge of county affairs, subject to the approval of the State Veterinarian, and commissioned by him; the salaries of said inspectors shall be fixed by the county authorities, and shall be sufficient to insure the employment of competent men. The State Veterinarian shall be empowered to employ at last one State Inspec-

tor, whose duty it shall be to inspect the work of county inspectors, or to do any special work at any time and place when directed, by the State Veterinarian, and who shall be paid by the funds appropriated by the State of Georgia for the work of tick eradication.

Sec. 4. Be it further enacted, That cattle, horses, or mules infested with cattle ticks or exposed to tick infestation, the owner or owners of which, after thirty days' written notice from a local or State inspector shall fail or refuse to dip such animals regularly every fourteen days in a vat properly charged with arsenical solution, as recommended by the United States Bureau of Animal Industry, under the supervision of the local inspector in charge of tick eradication, shall be placed in quarantine and dipped and cared for at the expense of the owner by the local inspector. Quarantine and dipping notice for cattle, horses or mules, the owner or owners of which can not be found, shall be served by posting copy of such notice in not less than three public places within the county, one of which shall be at the county court house. Such posting of quarantine notice shall be due and legal notice. It shall be the duty of the sheriff of any county in which the work of tick eradication is in progress to render said inspector any assistance necessary in the enforcement of this Act. Any expense incurred in the enforcement of this provision shall be constituted a lien upon any animals so quarantined; and should the owner fail or refuse to pay said expense after three days' notice, the animals shall be disposed of as provided by section 2034 of the Civil Code of Georgia, so far as said section refers to advertising and other proceedings to sell. The proceeds of said sale shall be applied to the payment of legal costs, including the expense of advertising, fee and expense of quarantine and dipping or disinfecting said animals, and the balance shall be paid to the owner, if known, and if unknown, shall, at the expiration of ninety days from the date of sale, if no legal claim has been established to same, be applied and paid into the tick eradication fund of the county; provided further, that the lien herein created shall be superior to all liens, except liens for taxes.

Sec. 5. Be it further enacted by the authority aforesaid, That any person moving any cattle infested with fever ticks into or within or through any county of this State, except upon his own premises for the purpose of slaughter, or for the purpose of taking same to a vat for the purpose of dipping, and any inspector who shall knowingly permit any cattle, horses or mules to be kept in the territory for which he shall be appointed, or any person who shall own or keep any cattle, horses or mules infected with fever ticks in any county of this State, after notice, as provided in Section 4 of this Act, shall be guilty of a misdemeanor and shall be punished as provided in Section 1065 of Volume 2, of the Code of 1910; and that all fines paid under the provisions of this section, after the payment of actual court costs, shall be paid to the proper county authorities and become a part of the fund to be used for tick eradication in said county.

Sec. 6. Be it further enacted by the authority aforesaid, That nothing contained in this Act shall be construed as affecting any rule or regulation heretofore or hereafter passed by the Department of Agriculture governing tick eradication in Georgia. This Act shall not go into effect until December 31st, 1919.

I, E. K. Wilcox, of counsel for the Petitioners, hereby certify that I have this day sent by United States registered mail a copy of the above and foregoing brief to Hon. F. G. Boatright, United States Attorney for the Southern District of Georgia, and that I have also sent a copy thereof by United States registered mail to Hon. John P. Sargent, the Attorney-General of the United States.

Dated at Valdosta, Georgia, this February 20, 1926.

E. K. Wilcox

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In the Supreme Court of the United States

OCTOBER TERM, 1925

No. 255

OSCAR THORNTON, SHABIE THORNTON, INMAN THORNTON, WESLEY MCDONALD, WAVERLY MCDONALD AND TINKER CARROLL, PETITIONERS

v.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The District Court filed no opinion. The opinion of the Circuit Court of Appeals was filed on November 5, 1924, and is reported in 2 F. (2nd) 561. It appears in the transcript of record, pages 64 to 65.

JURISDICTION

The petitioners, with sixteen others, were tried in the United States District Court for the Southern District of Georgia on an indictment containing two counts, in which they were charged with

conspiracy to violate Section 62 of the Criminal Code. (R. 1–5.) A verdict finding the petitioners guilty was returned on March 12, 1924. (R. 11.) Judgment and sentence of imprisonment for six months were entered on March 13, 1924. (R. 12.) The Circuit Court of Appeals rendered a judgment dated November 5, 1924, affirming the judgment of the District Court. (R. 65.) A writ of certiorari was granted by this Court by order filed March 9, 1925 (R. 66), under Section 240 of the Judicial Code (since amended by the Act of February 13, 1925).

STATEMENT OF FACTS

The principal questions involved in the case are (1) whether any Federal statute authorizes employees of the Bureau of Animal Industry of the United States Department of Agriculture to supervise the dipping of cattle within a State in order to prevent the spread of splenetic fever among cattle, and, (2) whether, if any statute does confer such authority, it is constitutional. The petitioners also raise certain questions as to the form of the indictment and as to the propriety of certain instructions to the jury.

Twenty-two defendants, including the six petitioners, were indicted in the District Court of the United States for the Southern District of Georgia under an indictment the first count of which alleged in substance that the defendants on the 10th day of July, 1920, and continuously thereafter up

to the finding of the indictment, did, in Echols County, Georgia, within the Southern District of Georgia, conspire, etc., to use deadly and dangerous weapons for the purpose of deterring and preventing certain named employees of the Bureau of Animal Industry of the United States Department of Agriculture from discharging their duties as such employees,

> which said employees were then and there charged with the duty of supervising the dipping of, and causing to be dipped, cattle, to wit; cows, bulls, yearlings, calves, and oxen, in order to prevent the spread of splenetic fever among cattle, and in order to eradicate and remove from tick-infested animals what is commonly known as the cattle fever tick.

The indictment described the weapons used and the manner of their use, and alleged that it was known to the defendants that the employees of the Bureau of Animal Industry named in the indictment were such employees and were engaged in the performance and execution of their duties as such. The first count charged four overt acts, all committed with deadly and dangerous weapons. (R. 1–4.)

The second count of the indictment alleged in substance that the defendants on or about the 1st day of July, 1920, and continuously thereafter up to the finding of the indictment, did, in Echols County, Georgia, within the Southern District of Georgia, conspire, etc., to forcibly impede and in-

terfere with the named employees of the Bureau of Animal Industry in the execution of their duties,

> said employees being then and there engaged under the Bureau aforesaid, in supervising and causing the dipping of cows, bulls, calves, and yearlings for the purpose of preventing the spread of splenetic fever and for the purpose of eradicating from said cattle what is commonly known as the cattle fever tick

by dynamiting and burning cattle dipping vats and cattle spray pens. It alleged that the defendants knew that the employees of the Bureau of Animal Industry named in the indictment were such employees and engaged in the discharge of their duties as such, and that their duties required the use of dipping vats and spray pens. The second count charged two overt acts, each involving the destruction of dipping vats or spray pens. (R. 4–5.)

The defendants demurred to the indictment. (R. 5–11.) After hearing argument the court overruled the demurrer (R. 11) and the case proceeded to trial.

It appears from the evidence that on June 17, 1915, an agreement was entered into between the State Veterinarian of the Georgia Department of Agriculture and the Bureau of Animal Industry of the United States Department of Agriculture, "regarding eradication of the cattle tick in the State of Georgia by cooperation," which provided, in substance, that the work of tick eradication should be cooperative in every particular; that the

Bureau of Animal Industry should detail a competent veterinary inspector to direct the tick eradication work and additional veterinary inspectors and agents in tick eradication to the extent of the means at hand and in proportion to the funds expended by the State for the employment of inspectors; and that the State veterinarian should employ competent State inspectors to the extent of the means at hand, should enforce State regulations governing the movement of cattle within the State similar to the regulations of the United States Department of Agriculture governing the interstate movement of cattle from the quarantined area, and should enforce measures authorized by law looking to the protection of tick eradication areas against the introduction of infection from without, and quarantine and prohibit the intracounty movement of infected cattle within the eradication areas except under conditions mutually agreed upon between the State and Federal authorities. (R. 38–40.)

S. J. Horne testified that he was employed by the United States Department of Agriculture as inspector in charge of tick eradication in Georgia and Florida, and was put in charge of the State of Georgia in September, 1921. (R. 14.) Prior to this time Echols County had been determined by Doctor Horne's predecessor to be a tick infested area and had been quarantined against interstate movements of cattle. (R. 16.) In the spring of 1922 the construction of vats for use in dipping cat-

tle to eradicate ticks was commenced, and there was evidently a great deal of opposition to the proposed tick eradication work, for as fast as vats were built they were dynamited. (R. 14–15.) From September until July, 1922, from 50 to 75 vats were destroyed. (R. 15.)

Doctor Horne sent first Doctor Applewhite, and later Mr. Jeter into Echols County. (R. 14–15.) In August, 1922, he took into Echols County all of the employees of the Bureau of Animal Industry named in the indictment except two. (R. 16.) He testified as to the work done by the employees of the Bureau of Animal Industry, and the purpose of sending them into Echols County, as follows (R. 15):

> They were instructed to visit the people. They were under my supervision, and I work under the supervision of the chief of the Bureau of Animal Industry in Washington. The first thing they were to do was to get the vats located and advise the people what was necessary to accomplish tick eradication, the dipping of cattle every fourteen days, under supervision, and for the employment and appointment of local men through the board of commissioners. By the words under supervision, I mean that the cattle shall be disinfected under the men directing the work. The actual work of dipping the cattle is accomplished by county and state inspectors, under the supervision of government inspectors. The Government men are not present at every

dipping, but they are present at all they can get to. The purpose in having Government men present is to gain knowledge of what has been accomplished, so that the counties or areas doing systematic work can be released from quarantine. The Government men also supervise the mixing of the liquid; it is their duty to see that the vats are properly charged with an arsenical preparation approved by the Government. The purpose of dipping cattle is to eradicate ticks. Ticks are a parasite that transmits a disease known as splenetic or Texas fever. An investigation was made because of the fact that cattle movements from the southern states to the northern markets invariably brought on a disease among cattle in those states that they did not have except immediately following these cattle movements from the south. This investigation by the Bureau of Animal Industry disclosed that the tick was the cause, and at that time a quarantine was placed over all the territory where ticks lived,—a Federal quarantine prohibiting the movement of cattle from the infected area into a free area.

As cattle were dipped they were marked with paint, in order to distinguish between the cattle which had been dipped and those which had not. (R. 16, 20.) The employees of the Bureau of Animal Industry named in the indictment were also given State commissions, under the cooperative agreement of June 17, 1915. (R. 20.) Their duties included supervising the dipping of cattle,

riding the range to see whether cattle had been dipped, seizing and impounding cattle which had not been dipped, serving on owners of cattle notices requiring that they be dipped, and guarding dipping vats. (R. 16, 18, 19, 21, 25, 37.) The employees of the Bureau of Animal Industry established a camp, called McKinnon Camp, where the men lived in tents. (R. 19.)

The opposition to the work being carried on by the State and county employees and the employees of the Bureau of Animal Industry resulted in the commission of a number of acts of violence. The indictment alleges (R. 2–5) that in furtherance of the conspiracy therein alleged and in order to effect the objects thereof, the conspirators shot at the employees of the Bureau of Animal Industry in camp for the night at Camp McKinnon; shot Max C. Lochridge and Roy S. Ritchey, employees of the Bureau of Animal Industry, murdering Lochridge and wounding Ritchey; assaulted and beat W. D. Counts, an employee of the Bureau of Animal Industry; shot at John Lofton, jr., and Frank Peterson, employees of the Bureau of Animal Industry, while they were guarding a dipping vat known as the Prime Vat (Lofton and Peterson were not, as a matter of fact, Federal employees, R. 35, 43); and blew up with dynamite and other high explosives fifteen dipping vats and burned four spray pens.

It is not necessary to consider in detail the evidence concerning the commission of the overt acts because, as stated by the Circuit Court of Appeals (R. 64), " it is not denied that there was sufficient proof of some of them."

THE GEORGIA STATUTES

The State of Georgia, by an Act approved August 16, 1909 (Georgia Laws, 1909, Pt. I, Title 6, p. 131), empowered the Commissioner of Agriculture to establish, maintain, and enforce quarantine lines and to make such rules and regulations as he deemed necessary to carry into effect the provisions of the Act. Section 9 of said Act provides (p. 134):

> That the Commissioner of Agriculture may appoint or commission Federal Veterinarian or Livestock Inspector who may be doing work in Georgia, as State Livestock Inspectors; *provided* they act without pay from the State of Georgia.

By an Act approved August 13, 1910 (Georgia Laws, 1910, Pt. I, Title 6, p. 125), the office of State Veterinarian was created. Section 2 of said Act, defining the duties of this officer, provides:

> That the duties of the State Veterinarian shall be to investigate and take proper measures for the control and suppression of all contagious and infectious diseases among the domesticated animals within the State, under such rules and regulations as may be

> promulgated by him and approved by the Commissioner of Agriculture of Georgia; he shall assume charge of the work of cattle-tick eradication in cooperation with the Federal authorities * * *.

An Act approved August 17, 1918 (Georgia Laws, 1918, Pt. I, Title VI, p. 256), known as the State-Wide Tick Eradication Act, provides (p. 257), among other things, in Section 4, that cattle, horses, or mules infected with cattle ticks or exposed to tick infestation shall be dipped regularly every fourteen days "in a vat properly charged with arsenical solution, as recommended by the United States Bureau of Animal Industry."

THE FEDERAL STATUTES

The Bureau of Animal Industry was established by an Act of May 29, 1884, c. 60, 23 Stat. 31. Section 3 of said Act is as follows (p. 32):

> That it shall be the duty of the Commissioner of Agriculture to prepare such rules and regulations as he may deem necessary for the speedy and effectual suppression and extirpation of said diseases and to certify such rules and regulations to the executive authority of each State and Territory and invite said authorities to cooperate in the execution and enforcement of this Act. Whenever the plans and methods of the Commissioner of Agriculture shall be accepted by any State or Territory in which pleuropneumonia or other contagious, infectious, or communicable disease is declared to exist, or such State or Territory shall have

> adopted plans and methods for the suppression and extirpation of said diseases, and such plans and methods shall be accepted by the Commissioner of Agriculture, and whenever the governor of a State or other properly constituted authorities signify their readiness to cooperate for the extinction of any contagious, infectious, or communicable disease in conformity with the provisions of this Act, the Commissioner of Agriculture is hereby authorized to expend so much of the money appropriated by this Act as may be necessary in such investigations, and in such disinfection and quarantine measures as may be necessary to prevent the spread of the disease from one State or Territory into another.

By an Act of February 9, 1889, c. 122, 25 Stat. 659, the Department of Agriculture was made one of the executive departments of the Government, under the supervision and control of a Secretary of Agriculture, and by an Act of July 14, 1890, c. 707, 26 Stat. 282, 288, the Secretary was vested with all the authority which by the Act of May 29, 1884, was conferred upon the Commissioner of Agriculture.

An Act of February 2, 1903, c. 349, 32 Stat. 791, after conferring on the Secretary of Agriculture certain powers with respect to the suppression and extirpation of contagious diseases among domestic animals conferred on the Secretary of the Treasury by the Act of May 29, 1884, provides (p. 792):

> He is hereby authorized and directed, from time to time, to establish such rules

and regulations concerning the exportation and transportation of livestock from any place within the United States where he may have reason to believe such diseases may exist into and through any State or Territory, including the Indian Territory, and into and through the District of Columbia and to foreign countries, as he may deem necessary, and all such rules and regulations shall have the force of law. Whenever any inspector or assistant inspector of the Bureau of Animal Industry shall issue a certificate showing that such officer had inspected any cattle or other livestock which were about to be shipped, driven, or transported from such locality to another, as above stated, and had found them free from Texas or splenetic fever infection, pleuropneumonia, foot-and-mouth disease, or any other infectious, contagious, or communicable disease, such animals, so inspected and certified, may be shipped, driven, or transported from such place into and through any State or Territory, including the Indian Territory, and into and through the District of Columbia, or they may be exported from the United States without further inspection or the exaction of fees of any kind, except such as may at any time be ordered or exacted by the Secretary of Agriculture; and all such animals shall at all times be under the control and supervision of the Bureau of Animal Industry of the Agricultural Department for the purposes of such inspection.

> SEC. 2. That the Secretary of Agriculture shall have authority to make such regulations and take such measures as he may deem proper to prevent the introduction or dissemination of the contagion of any contagious, infectious, or communicable disease of animals from a foreign country into the United States or from one State or Territory of the United States or the District of Columbia to another, * * *

An Act of March 3, 1905, c. 1496, 33 Stat. 1264, provides, in Section 1:

> That the Secretary of Agriculture is authorized and directed to quarantine any State or Territory or the District of Columbia, or any portion of any State or Territory or the District of Columbia, when he shall determine the fact that cattle or other livestock in such State or Territory or District of Columbia are affected with any contagious, infectious, or communicable disease * * *.

Section 2 prohibits the transportation, delivery for transportation, or driving on foot—

> * * * from any quarantined State or Territory or the District of Columbia, or from the quarantined portion of any State or Territory or the District of Columbia, into any other State or Territory or the District of Columbia, any cattle or other livestock, except as hereinafter provided.

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Section 3 provides (p. 1265):

> That it shall be the duty of the Secretary of Agriculture, and he is hereby authorized and directed, when the public safety will permit, to make and promulgate rules and regulations which shall permit and govern the inspection, disinfection, certification, treatment, handling, and method and manner of delivery and shipment of cattle, or other livestock, from a quarantined State or Territory or the District of Columbia, into any other State or Territory or the District of Columbia * * *.

Section 4 permits cattle or other livestock to be moved

> * * * from a quarantined State or Territory or the District of Columbia, or from the quarantined portion of any State or Territory or the District of Columbia, into any other State or Territory or the District of Columbia, under and in compliance with the rules and regulations of the Secretary of Agriculture, made and promulgated in pursuance of the provisions of section three of this Act:

but prohibits such movement of cattle or other livestock "in manner or method or under conditions other than those prescribed by the Secretary of Agriculture."

Section 5 was incorporated with unimportant changes in the Criminal Code as Section 62. It appears in the Criminal Code as follows:

> Whoever shall forcibly assault, resist, oppose, prevent, impede, or interfere with any officer or employee of the Bureau of Animal Industry of the Department of Agriculture in the execution of his duties, or on account of the execution of his duties, shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both; and whoever shall use any deadly or dangerous weapon in resisting any officer or employee of the Bureau of Animal Industry of the Department of Agriculture in the execution of his duties, with intent to commit a bodily injury upon him or to deter or prevent him from discharging his duties, or on account of the performance of his duties, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both.

The Act of May 11, 1922, c. 185, 42 Stat. 507, 510–512, making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1923, under the heading, "General Expenses, Bureau of Animal Industry," appropriated funds for carrying out the provisions of certain named Acts, including "the Act approved May 29, 1884, establishing a Bureau of Animal Industry," "the Act approved February 2, 1903, to enable the Secretary of Agriculture to more effectually suppress and prevent the spread of contagious and infectious diseases of livestock, and

for other purposes," and "the Act approved March 3, 1905, to enable the Secretary of Agriculture to establish and maintain quarantine districts, to permit and regulate the movement of cattle and other livestock therefrom, and for other purposes," and "to enable the Secretary of Agriculture to collect and disseminate information concerning livestock, dairy and other animal products; to prepare and disseminate reports on animal industry; to employ and pay from the appropriation herein made as many persons in the city of Washington or elsewhere as he may deem necessary; * * * to purchase and destroy diseased or exposed animals or quarantine the same whenever in his judgment essential to prevent the spread of pleuropneumonia, tuberculosis, or other diseases of animals from one State to another."

Specific amounts were appropriated for "inspection and quarantine work, including all necessary expenses for * * * the inspection of southern cattle" and for "all necessary expenses for the eradication of southern cattle ticks."

THE REGULATIONS OF THE DEPARTMENT OF AGRICULTURE

Various regulations and orders of the Department of Agriculture, relating to the interstate movement of livestock, were put in evidence. (R. 41–42.) These are not printed in the record, but

since they were made under the express authority of the statutes referred to above, they are matters of which the Court may take judicial notice. In *Caha* v. *United States*, 152 U. S. 211, Mr. Justice Brewer, delivering the opinion of the Court, said, on pages 221–222:

> The rules and regulations prescribed by the Interior Department in respect to contests before the Land Office were not formally offered in evidence, and it is claimed that this omission is fatal, and that a verdict should have been instructed for the defendant. But we are of opinion that there was no necessity for a formal introduction in evidence of such rules and regulations. They are matters of which courts of the United States take judicial notice. Questions of a kindred nature have been frequently presented, and it may be laid down as a general rule, deducible from the cases, that wherever, by the express language of any act of Congress, power is intrusted to either of the principal departments of Government to prescribe rules and regulations for the transaction of business in which the public is interested, and in respect to which they have a right to participate, and by which they are to be controlled, the rules and regulations prescribed in pursuance of such authority become a mass of that body of public records of which the courts take judicial notice.

Under date of June 15, 1916, the Secretary of Agriculture issued certain "Regulations Governing the Interstate Movement of Live Stock," effective on and after July 1, 1916, and designated as B. A. I. Order 245. The introductory paragraph provided:

> Under the authority conferred upon the Secretary of Agriculture by the provisions of the acts of Congress approved May 29, 1884 (23 Stat. 31), February 2, 1903 (32 Stat. 791), and March 3, 1905 (33 Stat. 1264), as amended by the act approved March 4, 1913 (37 Stat. 828, 831), the following regulations are hereby prescribed for the inspection, disinfection, certification, treatment, handling, and method and manner of delivery and shipment of live stock which is the subject of interstate commerce.

Section 2 of Regulation 1 provided:

> When the Secretary of Agriculture shall determine the fact that cattle or other live-stock in any State, Territory, or the District of Columbia are affected with any contagious, infectious, or communicable disease for which, in his opinion, a quarantine should be established, notice will be given of that fact. A rule will be issued placing in quarantine any State, Territory, or the District of Columbia, or any portion thereof, in which the disease exists, and this rule will either absolutely forbid the interstate movement of live stock from the quarantined area or will indicate the regulations under which interstate movements may be made.

Regulation 2 was headed, "To Prevent the Spread of Splenetic, Southern, or Texas Fever in Cattle," and a footnote stated:

> A "rule to prevent the spread of splenetic fever in cattle" is in effect throughout the entire year. This rule prescribes the quarantined area in the respective States, and should be considered in connection with these regulations.

Sections 1 and 2 of Regulation 2 provided for interstate shipments of cattle for immediate slaughter. Section 3 provided for the interstate movement of cattle for purposes other than immediate slaughter. It contained the following provisions, among others:

> *Paragraph 1.* Cattle of the quarantined area, or other cattle exposed to or infested with ticks (*Margaropus annulatus*), which have been properly dipped twice with an interval of from 7 to 12 days in a permitted arsenical solution or otherwise treated in a manner approved by the Secretary of Agriculture under the supervision of a bureau inspector and which have been certified by the said inspector to be free of infection from splenetic fever, may be moved interstate for any purpose: *Provided*, that the requirements set forth in paragraph 5 of this section are fully complied with.
>
> *Paragraph 2.* Cattle in areas where tick eradication is being systematically conducted in cooperation with the State authorities, or any cattle presented at a

Section 5, headed " Interstate Movement of Cattle Within the Quarantined Area," and Section 6, headed " Movement of Cattle from Quarantined to Free Area and Shipment Therefrom " were as follows:

> Section 5. Cattle shall not be transported, driven, or moved from the quarantined area of any State, Territory, or the District of Columbia to the quarantined area of any other State, Territory, or the District of Columbia, except in compliance with this regulation and subject to State, Territorial, or the District of Columbia restrictions.
>
> Section 6. Cattle shall not be shipped, transported, trailed, driven, or hauled in private conveyances, from the quarantined area in any State, Territory, or the District of Columbia, to the free area in the same State, Territory, or the District of Columbia, and delivered to a transportation company for transportation to any other State, Territory, or the District of Columbia, except in compliance with this regulation.

Rule 1, Revision 17, " To Prevent the Spread of Splenetic, Southern, or Texas Fever in Cattle " of the Department of Agriculture, effective on and after December 1, 1918, and designated as B. A. I. Order 262, stated:

> The fact has been determined by the Secretary of Agriculture, and notice is hereby given, that the contagious and infectious

disease known as splenetic, southern, or Texas fever exists in cattle * * * in the following-named States and territory, to wit: * * * Georgia * * *.

Now, therefore, I, D. F. Houston, Secretary of Agriculture, under authority conferred by Section 1 of the Act of Congress approved March 3, 1905 (33 Stat. 1264), * * * do hereby continue the quarantine on the areas hereinafter described; and do order by this Rule 1, Revision 17, under the authority and discretion conferred on the Secretary of Agriculture by Section 3 of the said Act of Congress approved March 3, 1905 (33 Stat. 1265), that the interstate movement of cattle from the areas herein quarantined shall be made only in accordance with the regulations of the Secretary of Agriculture for the prevention of the spread of splenetic, southern, or Texas fever in cattle.

There followed a description of the areas quarantined, which included Echols County, Georgia.

Various revisions of Rule 1—"To prevent the Spread of Splenetic, Southern, or Texas Fever in Cattle," known as Revisions 18 to 22, inclusive, continued the quarantine of Echols County until on and after December 31, 1923 (R. 41–42).

The "Regulations Governing the Interstate Movement of Live Stock", designated as B. A. I.

Order 245, were superseded by similar regulations designated as B. A. I. Order 263, effective on and after July 1, 1919, and these in turn were superseded by regulations designated as B. A. I. Order 273, effective on and after July 1, 1921, but the later regulations continued without substantial change the provisions of B. A. I. Order 245 set forth above.

THE QUESTIONS

The questions raised by the petition for certiorari are as follows:

(1) Whether the employees of the Bureau of Animal Industry of the Department of Agriculture, named in the indictment, were legally charged with the duty of supervising the dipping of, and causing to be dipped, cattle, in order to prevent the spread of splenetic fever among cattle, and in order to eradicate and remove from tick-infested animals what is commonly known as the cattle fever tick. The petitioners do not question the employment of the employees of the Bureau of Animal Industry and do not question that they were performing their duties under orders of their superiors in the Bureau of Animal Industry, but they allege that there was no statutory authority for the performance of the duties set forth in the indictment.

(2) Whether the Act of May 29, 1884, c. 60, 23 Stat. 31 (or, presumably, any other statute, although the petitioners have throughout their argument treated

the Act of 1884 as the only statute upon which the authority of the employees of the Bureau of Animal Industry can be based) is constitutional, if, when properly construed, it confers upon the Department of Agriculture authority to employ agents of the Bureau of Animal Industry in supervising the dipping of, and causing to be dipped, cattle not moving or intended to move in interstate commerce.

(3) Whether the indictment was invalid because it failed to allege the acceptance by the State of Georgia of rules and regulations for the suppression of contagious diseases among cattle, prepared by the Secretary of Agriculture, and failed to allege that plans and methods for the suppression and extirpation of said diseases adopted by the State of Georgia had been accepted by the Secretary of Agriculture. The petitioners contend that acceptance by the State of Georgia of rules and regulations prepared by the Secretary of Agriculture, or acceptance by the Secretary of Agriculture of plans and methods adopted by the State of Georgia, was a condition precedent under the Act of May 29, 1884, to the exercise of the powers vested in the Secretary of Agriculture by said Act.

(4) Whether the indictment was defective in that, as the petitioners allege (Petition for certiorari, p. 2),

> it nowhere alleges that the cattle being dipped were the subject matter of interstate commerce, or that said cattle had in any way

under the law become subject to the supervision or control or power of the Secretary of Agriculture.

These questions were raised in the court below by assignments of error challenging the action of the trial court in overruling the demurrer and each count thereof (R. 57–58), the admission in evidence over the defendant's objection of the contract dated June 17, 1915, between the Bureau of Animal Industry and the State Veterinarian of the Georgia Department of Agriculture (R. 58), and certain instructions given by the trial court to the jury (R. 58–60).

ARGUMENT

Summary

I. If the employees of the Bureau of Animal Industry named in the indictment were performing any duty legally imposed upon them pursuant to the Federal statutes, the conspiracy alleged in the indictment and established by the evidence was a conspiracy to violate Section 62 of the Criminal Code, whether or not they were also performing other work beyond the scope of their Federal duties. The conspiracy of which the petitioners were convicted was not directed to preventing the employees of the Bureau of Animal Industry from discharging any particular portion of their work in Echols County; both the conspiracy and the overt acts were clearly intended to deter or prevent

all work in connection with the dipping of cattle in Echols County.

II. Some portion, at least, of the work performed by the employees of the Bureau of Animal Industry was authorized by the Federal statutes. The Secretary of Agriculture, pursuant to authority granted by the Act of March 3, 1905, c. 1496, 33 Stat. 1264, had quarantined Echols County against interstate movements of cattle and had issued regulations permitting interstate movements of cattle from quarantined areas only upon certain conditions, among which were that they should have been dipped under the supervision of an inspector of the Bureau of Animal Industry. The Act of May 11, 1922, c. 185, 42 Stat. 507, had appropriated money for the Department of Agriculture for inspection and quarantine work. The Secretary of Agriculture was therefore authorized to maintain inspectors in quarantined areas, if not for the purpose of compelling dipping of cattle, at least for the purpose of supervising the dipping of cattle by their owners or by State or local authorities, in order that cattle so dipped might, if the owner should so desire, be shipped in interstate commerce without further delay.

III. The power of Congress to regulate commerce includes power to quarantine areas where contagious diseases of cattle exist, to prohibit interstate movements of cattle from such areas, and to au-

formed under valid Federal authority the defendants were properly convicted. The conspiracy of which the petitioners were convicted was not directed to preventing the employees of the Bureau of Animal Industry from discharging any particular portion of their work in Echols County; both the conspiracy and the overt acts were clearly intended to deter or prevent all work in connection with the dipping of cattle in Echols County. The conspiracy and the overt acts were not in resistance to any particular acts involving particular cattle; it does not even appear in the record that any of the petitioners owned or had any interest in a single head of cattle.

It is well settled that Congress may make it a crime to do any act which is intended to, or necessarily does, interfere with an officer or agent of the Federal Government in the performance of his duties as such, and such act is no less a crime against the Federal Government because it may also interfere with other work being performed by the officer or agent which is not within the scope of his Federal functions.

In *Ex parte Yarbrough*, 110 U. S. 651, petitioners were convicted under an indictment which, in substance, alleged that they conspired to intimidate Berry Saunders, a citizen of African descent, in the exercise of his right to vote for a member of the Congress of the United States, and that in the execution of that conspiracy they beat, bruised, wounded, and otherwise maltreated him. Petition-

ers attacked the constitutionality of the statutes which made such a conspiracy a crime. The Court held the statutes valid, Mr. Justice Miller, writing the opinion of the Court, saying (pp. 659, 661–662):

> It is very true that while Congress at an early day passed criminal laws to punish piracy with death, and for punishing all ordinary offenses against person and property committed within the District of Columbia, and in forts, arsenals, and other places within the exclusive jurisdiction of the United States, it was slow to pass laws protecting officers of the Government from personal injuries inflicted while in discharge of their official duties within the States. This was not for want of power, but because no occasion had arisen which required such legislation, the remedies in the State courts for personal violence having proved sufficient.
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> * * * * *
>
> Now the day fixed for electing members of Congress has been established by Congress without regard to the time set for election of State officers in each State, and but for the fact that the State legislatures have, for their own accommodation, required State elections to be held at the same time, these elections would be held for Congressmen alone at the time fixed by the act of Congress.
>
> Will it be denied that it is in the power of that body to provide laws for the proper conduct of those elections? To provide, if

necessary, the officers who shall conduct them and make return of the result? And especially to provide, in an election held under its own authority, for security of life and limb to the voter while in the exercise of this function? Can it be doubted that Congress can by law protect the act of voting, the place where it is done, and the man who votes, from personal violence or intimidation and the election itself from corruption and fraud?

If this be so, and it is not doubted, are such powers annulled because an election for State officers is held at the same time and place? Is it any less important that the election of Members of Congress should be the free choice of all the electors because State officers are to be elected at the same time? *Ex parte Siebold*, 100 U. S. 371.

These questions answer themselves; and it is only because the Congress of the United States, through long habit and long years of forbearance, has, in deference and respect to the States, refrained from the exercise of these powers, that they are now doubted.

In *In re Coy*, 127 U. S. 731, defendants were convicted under an indictment which alleged, in substance, that whereas by the law of the State of Indiana it was the duty of inspectors of election to take certified lists of the voters, with the returns of the judges of election, and safely keep them until they delivered them to the county clerk or to the board of canvassers who were to examine and count

the votes of all the precincts in the county, they were persuaded by the defendants, who influenced them in various ways, to deliver up the certificates, poll lists, and tally papers to other persons who had no authority to take charge of them, and who thus had an opportunity of opening, examining, and falsifying those documents. Mr. Justice Miller, writing the opinion of the Court, stated that counsel for the defendants conceded that Congress had the power, under the Constitution, to adopt the laws of the several States, respecting the mode of electing members of Congress, and, as resulting from that power, the right to prescribe punishment for infractions of the law so adopted; that Congress had exercised this power, and had adopted these laws, and, with them, the officers created under them, making them for the purposes of election of representatives in Congress its officers, and had added new sanctions to such laws, and subjected such officers to the penalties of these sanctions. The opinion then continued (pp 753–754):

> The main objection to the indictment, however, which is urged with great earnestness by counsel for appellants, is, that it contains no averment that the intent and purpose of the defendants' conduct was to affect in any manner the election of a member of Congress, or to influence the returns relating to that office. The proposition is put in various forms, that since there were many State and local officers also voted for at the

election in question and in those precincts, and as it is consistent with the indictment that the actions of the conspirators were directed only to the election of those persons, and not to that for the Federal office of a congressional representative, the indictment is for that reason insufficient.

The charge is that the conspirators *unlawfully and feloniously* induced the election officers to omit to perform their duty in this respect, which is in general conceded to be expressive of an evil intent. But counsel demand something more than this general evil intent in tampering with the poll lists, tally papers and certificates, although it is not denied that the object of the parties accused, in inducing the election officers to violate their duty, proceeded from a criminal intent, or that it was done for the purpose of affecting the returns contained in the papers that were withheld, or exposing them to the danger of mutilation and alteration. It is said, however, that since the evil intent is not shown to have been specifically aimed at the returns of the vote for Congressmen, the statutes of the United States can have no force so far as the infliction of any penalty is concerned: and it is asserted that Congress had no power to provide for any punishment where no intent affecting the congressional election is averred.

It would be a very singular principle to establish, that, where a man was charged with a homicide, caused by maliciously shooting into a crowd with the purpose of

killing some person against whom he bore malice, but with no intent to injure or kill the individual who was actually struck by the shot, he should be held excused because he did not intend to kill that particular person and had no malice against him.

The analogy of this example to the present case is close. The persons accused did desire and intend to interfere with the election returns, and they did purpose to falsify those returns, as to some of the persons, at least, who were then voted for as candidates. It is argued on their behalf that because it is not averred in the indictment that they intended to falsify the election returns with regard to the congressional vote, or to affect those particular returns, it is to be held bad. It is also insisted that the felonious intent had relation to the action of inducing the officers to omit the duty of keeping carefully the poll books and tally sheets, and although the records of the votes for Congressmen might possibly also suffer along with a number of other persons who might be affected by that omission, yet because there was not in the minds of the conspirators the specific intent or design to influence the congressional election, they are not to be held liable under this statute.

The object to be attained by these acts of Congress is to guard against the danger, and the opportunity, of tampering with the election returns, as well as against direct and intentional frauds upon the vote for

> members of that body. The law is violated whenever the evidences concerning the votes cast for that purpose are exposed or subjected in the hands of improper persons or unauthorized individuals to the opportunity for their falsification, or to the danger of such changes or forgeries as may affect that election, whether they actually do so or not, and whether the purpose of the party guilty of thus wresting them from their proper custody and exposing them to such danger might accomplish this result.

See also *Ex parte Siebold*, 100 U. S. 371; *Ex parte Clarke*, 100 U. S. 399.

Under the rule expressed in the above cases there can be no doubt that the Federal Government may use, in the performance of its functions, persons who are also engaged in performing duties for a State.

II

SOME PORTION, AT LEAST, OF THE WORK PERFORMED BY THE EMPLOYEES OF THE BUREAU OF ANIMAL INDUSTRY WAS AUTHORIZED BY THE FEDERAL STATUTES

The Federal statutes referred to on pages 10–15 above were undoubtedly an attempt by Congress to deal in a comprehensive way with the prevention of the spread of contagious, infectious, and communicable diseases of cattle, in so far as such work was within its constitutional power. For the purpose of preventing the spread of such diseases the Secretary of Agriculture was authorized and di-

rected by Section 1 of the Act of March 3, 1905, c. 1496, 33 Stat. 1264, to quarantine any State or Territory or the District of Columbia, or any portion of any State or Territory or the District of Columbia, when he should determine the fact that cattle or other livestock in such State or Territory or District of Columbia were affected with any contagious, infectious, or communicable disease. In order, however, that any such quarantine should be as little burdensome as possible, the interstate shipment of cattle from quarantined areas was not absolutely prohibited under all circumstances, but the Secretary of Agriculture was authorized and directed, by Section 3 of the Act, when the public safety would permit, to make and promulgate rules and regulations which should permit and govern the inspection, disinfection, certification, treatment, handling, and method and manner of delivery and shipment of cattle from quarantined areas. And money to carry out the purposes of the statutes and the regulations made pursuant thereto was made available from time to time, as by the Act of May 11, 1922, making appropriations for the Department of Agriculture, which, among other things, appropriated money for "inspection and quarantine work, including all necessary expenses for * * * the inspection of southern cattle" and for "all necessary expenses for the eradication of southern cattle ticks."

The regulations of the Secretary of Agriculture, referred to on pages 18–24 above, permitted the in-

terstate shipment of cattle from a quarantined area upon certain conditions, among which were that they should have been dipped under the supervision of an inspector of the Bureau of Animal Industry, except that cattle located in areas where tick eradication was being conducted in cooperation with the State authorities, and which were on premises known by bureau inspectors to be free from ticks, might in certain cases be shipped upon inspection and certification by a bureau inspector without dipping. All shipments of inspected or dipped and certified cattle were to be accompanied by the certificate of the bureau inspector showing that the shipment was authorized under the regulations.

These regulations were clearly authorized by the Federal statutes, and the regulations as well as the statutes show a purpose on the one hand to prevent the spread of disease through interstate shipments from areas where cattle are affected with disease, and on the other to permit such shipments with as little interference as public safety will permit. It needs no argument to demonstrate that this purpose would be largely defeated if the inspection, disinfection, and certification contemplated by the statutes and provided for by the regulations were restricted to cattle actually shipped in interstate commerce or set apart or intended for such shipment. Two dippings with an interval of from 7 to 12 days between were found by the Secretary of

Agriculture to be necessary to prevent the spread of disease, except in areas where tick eradication was being conducted in cooperation with the State authorities. To delay a shipment for the time required for the dippings after the owner of cattle had set them apart for interstate shipment would often work a hardship.

There can be no doubt, therefore, that the Secretary of Agriculture was authorized to maintain inspectors in quarantined areas, if not for the purpose of compelling dipping of cattle not moving or intended to move in interstate commerce, at least for the purpose of supervising the dipping of any cattle by their owners or by State or local authorities, in order that cattle so dipped might, if the owner should so desire, be shipped in interstate commerce without further delay. Such supervision, far from imposing any burden upon the owners of cattle, would do no more than to relieve such owners from the Federal quarantine to the greatest extent consistent with preventing the spread of disease.

By the order of the Secretary of Agriculture, referred to on pages 22 and 23 above, it was determined in 1918 that splenetic fever existed in cattle in Echols County, Georgia, and that county was quarantined, and such determination was renewed and the quarantine continued from time to time until after the period referred to in the indictment. It can not be doubted, therefore, that the Secretary

of Agriculture was authorized by the Federal statutes to maintain inspectors in Echols County to supervise the dipping of cattle.

But, while it does not seem to us to be essential to a decision in this case, we think it advisable, in view of the petitioners' claim that the employees of the Bureau of Animal Industry, if engaged in the duties stated in the indictment, were engaged in "the work of usurpation of authority and of tyranny" (Brief, p. 21), to point out that the Federal statutes authorized more than mere supervision. The Act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1923, c. 185, 42 Stat. 507, 511, 512, in one paragraph appropriated $529,640 for certain purposes, including inspection and quarantine work, including "all necessary expenses for * * * the inspection of southern cattle" and in another paragraph appropriated $660,000 for "all necessary expenses for the eradication of southern cattle ticks." The Act clearly contemplated affirmative action for the eradication of southern cattle ticks, as well as inspection and quarantine and supervision in connection therewith.

The Act appropriated funds for carrying out the provisions of the Act of May 29, 1884. Of the latter Act it was said in *Missouri, Kansas & Texas Railway* v. *Haber*, 169 U. S. 613, at page 623:

> If any State was ready to cooperate with the Commissioner of Agriculture, then, by the third section, that officer was authorized

> to use the money appropriated by Congress in such investigations and in such disinfection and quarantine measures as were necessary "to prevent the spread of the disease from one State or Territory into another."

In *Reid* v. *Colorado*, 187 U. S. 137, a statute of Colorado providing safeguards against the introduction of diseased cattle into the State was held constitutional on the ground that the Act of 1884 did not cover the whole subject of transportation of livestock among the several states. The Court said (p. 147–148):

> Congress did not assume to declare that "the rules and regulations" which that Department [the Department of Agriculture] might adopt as necessary "for the speedy and effectual suppression and extirpation of said diseases" should have in themselves, or apart from the action of a State, any binding force upon the States. They were to be certified to the executive authority of each State, and the cooperation of such authorities in executing the act of Congress invited. If the authorities of any State adopted the plans and methods devised by the Department, or if the State authorities adopted measures of their own which the Department approved, then the money appropriated by Congress could be used in conducting the required investigations and in such disinfection and quarantine measures as might be necessary to prevent the spread of the diseases in question from one State or

> Territory into another. Congress did not intend to override the power of the States to care for the safety of the property of their peoples by such legislation as they deemed appropriate. It did not undertake to invest any officer or agent of the Department with authority to go into a State and without its assent take charge of the work of suppressing or extirpating contagious, infectious, or communicable diseases there prevailing and which endangered the health of domestic animals.

This interpretation of the statute was approved in *Oregon-Wash. R. R. & Nav. Co.* v. *State of Washington*, decided by this Court on March 1, 1926.

The proper Federal officers were therefore authorized to use the money appropriated by the Act in disinfection work on two conditions: First, that the State should be ready to cooperate; and, second, that the measures should be such as were necessary "to prevent the spread of the disease from one State or Territory into another." Both conditions were met in this case.

The Georgia Act of August 13, 1910, provided that the State Veterinarian should "assume charge of the work of cattle-tick eradication in cooperation with the Federal authorities." The contract of June 17, 1915, between the State Veterinarian and the Federal Bureau of Animal Industry, provided that the work of tick eradication should be cooperative in every particular. The Georgia State-Wide

Tick Eradication Act approved August 17, 1918, provided for dipping of cattle " in a vat properly charged with arsenical solution, as recommended by the United States Bureau of Animal Industry." It is evident, therefore, that the Bureau of Animal Industry and the properly constituted authorities of the State of Georgia had agreed upon plans and methods for the suppression of splenetic fever and had agreed to cooperate. To hold that, as the petitioners seem to contend, more formal approval of plans and methods was necessary, would be to read into the statute a condition which is not required by its language. In *Haas* v. *Henkel*, 216 U. S. 462, and *United States* v. *Birdsall*, 233 U. S. 223, it was held that no set form is essential to the validity of a requirement or regulation of an executive department; such requirement or regulation may be in writing or established by custom.

The second condition of Section 3 of the Act of May 29, 1884, was also met. Echols County is bounded on the south by a county in the State of Florida. The Circuit Court of Appeals took judicial notice of this fact and held (R. 65) that " the supervision of cattle complained of had a direct tendency to prevent the spread of disease into another state." The petitioners complain of this, saying (p. 30 of brief):

> We call attention to the further fact that in rendering the decision complained of the Circuit Court of Appeals assumed that the

> county of Florida adjacent to Echols County was tick free, when in point of fact it was not. That Court could not take judicial cognizance of a fact which did not exist.

There is not a word in the opinion of the Circuit Court of Appeals to indicate that it assumed that the county of Florida adjacent to Echols County was tick free. That this county in Florida was not tick free did not make it unimportant to prevent the spread of disease from Georgia into Florida. Splenetic fever was present in Florida, but it does not follow that all cattle in the county of Florida adjacent to Echols County, Georgia, were infected, or that there was no necessity for preventing an increase in the disease in Florida through its spread from Echols County.

III

THE POWER OF CONGRESS TO REGULATE COMMERCE INCLUDES POWER TO QUARANTINE AREAS WHERE CONTAGIOUS DISEASES OF CATTLE EXIST, TO PROHIBIT INTERSTATE MOVEMENTS OF CATTLE FROM SUCH AREAS, AND TO AUTHORIZE THE SUPERVISION OF DIPPING OF CATTLE IN SUCH AREAS BY FEDERAL AGENTS

Neither the Federal statutes nor the regulations of the Secretary of Agriculture contain anything which can by any possibility be construed as an attempt to regulate anything but interstate commerce. They provide only for quarantining areas where contagious diseases are found to exist, and regulate only interstate movements of cattle from

such areas. That such a quarantine is within the power of the Federal Government is not, and could not be, disputed. *Reid* v. *Colorado,* 187 U. S. 137, 146–147. As has been pointed out in the preceding point of this brief, the supervision of dipping of cattle contemplated by the regulations, and actually carried on by the employees of the Bureau of Animal Industry named in the indictment, was only part of a system devised for the purpose of permitting the movement of cattle in interstate commerce from quarantined areas and at the same time protecting the public against the spread of disease.

As the Federal Government has power to prohibit absolutely interstate movements of cattle from quarantined areas, it follows that it must also have power to permit such movements only if the cattle have been dipped under Federal supervision and to provide for such supervision. Nothing in the Federal statutes or regulations in any way compelled owners of cattle in quarantined areas to have such cattle dipped under the supervision of Federal agents; only if they were not so dipped they could not be moved in interstate commerce.

That no cattle in Echols County may have been moving in, or intended for, interstate commerce at any particular time, is immaterial; the supervision of dipping of cattle in order that they might be available for interstate commerce was so related to such commerce as to be clearly within the power of the Federal Government. The quarantine and

the provision for supervision of dipping were both parts of one scheme; to prevent the interstate movement of cattle from areas where disease existed except upon such conditions as would protect the public against the spread of the disease. In *United States* v. *Ferger*, 250 U. S. 199, the validity of an Act of Congress punishing forgery and utterance of bills of lading for fictitious shipments in interstate commerce was in question. It was contended that there was and could be no commerce in a fraudulent and fictitious bill of lading, and therefore that the power of Congress could not embrace such pretended bill. In upholding the Act, Mr. Chief Justice White, delivering the opinion of the Court, said of this objection (p. 203):

> But this mistakenly assumes that the power of Congress is to be necessarily tested by the intrinsic existence of commerce in the particular subject dealt with, instead of by the relation of that subject to commerce and its effect upon it. We say mistakenly assumes, because we think it clear that if the proposition were sustained it would destroy the power of Congress to regulate, as obviously that power, if it is to exist, must include the authority to deal with obstructions to interstate commerce (*In re Debs*, 158 U S. 564) and with a host of other acts which, because of their relation to and influence upon interstate commerce, come within the power of Congress to regulate, although they are not interstate commerce in and of themselves.

To like effect is *Stafford* v. *Wallace*, 258 U. S. 495, and many other cases cited therein.

The Federal Government has power to provide and protect the facilities for interstate commerce, as well as to regulate particular movements in interstate commerce, as is shown by the cases holding that Congress has power to construct or to authorize individuals or corporations to construct highways, railroads, and bridges from State to State; for example, *California* v. *Pacific Railroad Co.*, 127 U. S. 1; *Luxton* v. *North River Bridge Co.*, 153 U. S. 525.

The present case, of course, involves no question of how far Congress may go in regulating transactions entirely within a State because of their necessary connection with interstate commerce. No regulation of intrastate transactions is involved. Supervision and inspection are not regulation. In *Interstate Commerce Commission* v. *Goodrich Transit Co.*, 224 U. S. 194, in which it was held that the Interstate Commerce Commission has power to require a carrier engaged in both interstate and intrastate business to keep accounts covering all of its business in the manner prescribed by the Commission, the Court said, on page 211:

> It is a mistake to suppose that the requiring of information concerning the business methods of such corporations, as shown in their accounts, is a regulation of business not within the jurisdiction of the Commis-

> sion, as seems to be argued for the complainants. The object of requiring such accounts to be kept in a uniform way and to be open to the inspection of the Commission is not to enable it to regulate the affairs of the corporations not within its jurisdiction, but to be informed concerning the business methods of the corporations subject to the act that it may properly regulate such matters as are really within its jurisdiction. Further, the requiring of information concerning a business is not regulation of that business.

In our opinion, all that is necessary in order to sustain the conviction in this case is to hold that Congress has power to authorize the supervision by Federal agents of dipping of cattle in areas quarantined by the Secretary of Agriculture. But we wish expressly to disclaim any concession that the power of Congress is limited to authorizing such supervision. We have no doubt that Congress also has power to assist a State in many ways in its efforts to eradicate contagious diseases. It is not necessary that such power should be found in any particular clause of the Constitution. In *United States* v. *Gettysburg Electric Ry.*, 160 U. S. 668, in which the question was whether Congress could authorize the condemnation of land for the purpose of marking, and opening avenues along, the positions of the Armies at Gettysburg, the Court said, on pages 681, 683:

> Congress has power to declare war and to create and equip armies and navies. It has the great power of taxation to be exercised for the common defense and general welfare. Having such powers, it has such other and implied ones as are necessary and appropriate for the purpose of carrying the powers expressly given into effect. * * *
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> * * * * *
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> No narrow view of the character of this proposed use should be taken. Its national character and importance, we think, are plain. The power to condemn for this purpose need not be plainly and unmistakably deduced from any one of the particularly specified powers. Any number of those powers may be grouped together, and an inference from them all may be drawn that the power claimed has been conferred.

As stated in *Massachusetts* v. *Mellon,* 262 U. S. 447, 487–488,

> * * * since the formation of the Government, as an examination of the acts of Congress will disclose, a large number of statutes appropriating or involving the expenditure of moneys for non-federal purposes have been enacted and carried into effect.

IV

THE INDICTMENT IS VALID

The petitioners contend that the indictment is invalid because there is no allegation that any rules and regulations prepared by the Secretary of

Agriculture of the United States for the suppression and extirpation of infectious, contagious, and communicable diseases among livestock had been certified to the executive authority of the State of Georgia and accepted, or that the plans and methods adopted by the State of Georgia for that purpose had been accepted by the Secretary of Agriculture, and because there is no allegation that the cattle being dipped were the subject matter of interstate commerce or had "in any way under the law become subject to the supervision or control or power of the Secretary of Agriculture." This, of course, amounts to a contention that the indictment, in addition to alleging that the Federal employees were charged with the duty of supervising the dipping of, and causing to be dipped, cattle, in order to prevent the spread of splenetic fever among cattle, and in order to eradicate and remove from tick-infested animals what is commonly known as the cattle fever tick, should also have alleged the evidentiary facts establishing such duty.

But the rules of criminal pleading do not require an indictment to set forth the evidence, or to negative every possible theory of the defense. *Stokes* v. *United States,* 157 U. S. 187.

The indictment in this case does not charge as a substantive offense the offense made criminal by Section 62 of the Criminal Code. On the contrary, it charges only a conspiracy to commit that offense,

which is an entirely different crime. *United States* v. *Rabinowich*, 238 U. S. 78. In a charge of conspiracy the conspiracy is the gist of the crime, and certainty to a common intent, sufficient to identify the offense which the defendants conspired to commit, is all that is requisite in stating the object of the conspiracy. *Williamson* v. *United States*, 207 U. S. 425.

In *Wolf* v. *United States* (C. C. A. 7th Circuit), 283 Fed. 885, it was held that an indictment for conspiracy to defraud the United States by evading inspection of goods manufactured under contracts for war supplies is not required to set out copies of the contracts, or to allege the authority of the officers who signed the contracts.

In *Foster* v. *United States* (C. C. A. 5th Circuit), 256 Fed. 207, one count of an indictment charged the defendant, while postmaster at Shongaloo, Louisiana, with failing or refusing to remit to or deposit in the Treasury of the United States, or a designated depository, money-order funds of the Shongaloo post office, and thereby embezzling them. Another count charged the defendant with having failed to account for or turn over to the proper officer or agent money-order funds, when required so to do by the law or the regulations of the Post Office Department, or upon demand or order of the Postmaster General, either directly or through a duly authorized officer or agent, and having thereby embezzled them. It was alleged that Shreve-

port " was then and there the designated depository of the said post office at Shongaloo, La.," and that the defendant failed to turn over funds to the post-office inspector " upon demand and order of the Postmaster General, made through the said A. C. Caldwell, post-office inspector, the said A. C. Caldwell, post-office inspector, being then and there a duly authorized officer and agent of the Postmaster General." These allegations were held good against the objection made to them that they did not say by what means the depositary was designated and the post-office inspector made the authorized agent of the department. The court said (p. 210):

> The manner in which or the means by which these things were done are matters of evidence rather than of averment. The defendant could have obtained a more particular description by demanding a bill of particulars. No prejudice could have resulted to the defendant from the alleged imperfect averment, and, if imperfect, it was cured by section 1025 of the Revised Statutes (Comp. Stat. Sec. 1691), especially when, as in this case, objection was first interposed upon the trial of the cause.

In *Ledbetter* v. *United States*, 170 U. S. 606, 612, Mr. Justice Brown, speaking for the Court, said:

> Notwithstanding the cases above cited from our reports, the general rule still holds good that upon an indictment for a statutory offence the offence may be described in the words of the statute, and it is for the defend-

ant to show that greater particularity is required by reason of the omission from the statute of some element of the offense.

In the present case the petitioners can not possibly have been prejudiced by the fact that the indictment did not allege the evidence establishing the duty of the Federal employees and therefore can not now object to the indictment. Rev. Stat., Sec. 1025; *Connors* v. *United States,* 158 U. S. 408, 411; *Armour Packing Co.* v. *United States,* 209 U. S. 56, 84.

Moreover, even if this Court should decide that some portion of the duties of the employees of the Bureau of Animal Industry, as alleged in the indictment, was not authorized by statute, or, if so authorized, was beyond the constitutional power of Congress, the validity of the indictment would not be affected. It is familiar law that mere surplusage or unnecessary allegations will not vitiate an indictment which contains sufficient matter to charge a crime.

Grand Trunk Ry. Co. v. *United States* (C. C. A. 7th Circuit), 229 Fed. 116, 119; certiorari denied 241 U. S. 681.

Meyer v. *United States* (C. C. A. 7th Circuit), 258 Fed. 212, 215.

United States v. *Ford* (D. C. Ohio), 263 Fed. 449, 451; affirmed, *Ford* v. *United States* (C. C. A. 6th Circuit), 281 Fed. 298.

Nichamin v. *United States* (C. C. A. 6th Circuit), 263 Fed. 880, 881.

Farley v. *United States* (C. C. A. 9th Circuit), 269 Fed. 721, 724.

Friedman v. *United States,* (C. C. A. 2nd Circuit), 276 Fed. 792, 795–796.

Maresca v. *United States* (C. C. A. 2nd Circuit), 277 Fed. 727, 743; certiorari denied 257 U. S. 657.

United States v. *Drawdy* (D. C. Fla.), 288 Fed. 567, 570.

United States v. *Weiss* (D. C. Ill.), 293 Fed. 992, 995–996.

V

THERE IS NOTHING IN THE INSTRUCTIONS TO THE JURY WHICH WAS PREJUDICIAL TO THE PETITIONERS

The petitioners contend that certain instructions to the jury (R. 53–54) were erroneous. These instructions stated in effect that the employment of men by the Federal authorities, acting through the Department of Agriculture, in the enforcement of the Georgia cattle dipping law, in cooperation with the authorities of the State of Georgia, was valid, and that men so employed would be lawfully employed as employees or agents of the Federal Government.

It is not necessary to consider whether these instructions were correct. Even if they were erroneous, the substantial rights of the petitioners were not affected, and the alleged error in the instructions would not require a reversal of the judgment of the Circuit Court of Appeals. (Judi-

cial Code, Section 269, as amended by the Act of February 26, 1919, c. 48, 40 Stat. 1181.)

There is no issue as to what were the duties of the Federal employees named in the indictment, and no question that these duties included supervision of dipping of cattle. The only issue is whether these duties, or any part thereof, were lawful. On the evidence, the jury must have found that the Federal employees were engaged in supervision of dipping of cattle, as well as in assisting in the enforcement of the compulsory features of the Georgia cattle dipping law.

If this Court should decide that the Federal employees were not lawfully engaged, as such, in the enforcement of the Georgia cattle dipping law, but were lawfully engaged, as such, in supervising the dipping of cattle, the petitioners were properly convicted and were in no way prejudiced by the instructions complained of.

In *Griffith* v. *United States* (C. C. A. 7th Circuit), 261 F. 159, certiorari denied 252 U. S. 577, a prosecution for violation of the White Slave Traffic Act, a charge which permitted conviction if the jury found that the girl named was transported for " some immoral purpose " was attacked on the ground that this might include an immoral purpose other than sexual immorality. It was held that as the record showed that the immoral purpose of the interstate expedition was only that of illicit sexual intercourse, and as there was no evidence

whatever in the record of any other immorality as the purpose of the expedition, there was no prejudicial error.

In *Doremus* v. *United States* (C. C. A. 5th Circuit), 262 Fed. 849, certiorari denied 253 U. S. 487, it was held that on a trial for abetting a violation of the Harrison Narcotic Law by a druggist, an instruction erroneously authorizing a conviction, though the druggist had no actual knowledge that a prescription was wrongfully issued, was not ground for reversal, where reasonable men could have drawn but the one inference that the druggist had such actual knowledge.

In *Pounds* v. *United States* (C. C. A., 7th Circuit) 265 F. 242, the defendant had been convicted in a District Court in Illinois of feloniously having in his possession stolen property. The trial court had charged the jury, in effect, that if they believed that Albert, the defendant's brother, stole the property in Illinois, and the defendant came to Illinois and took it to Missouri, he was equally guilty with Albert. The Circuit Court of Appeals held that as an abstract proposition this charge was erroneous because it omitted the element of the defendant's knowledge that the property was stolen. The trial court had also charged the jury, however, that there could be no conviction in Illinois for the possession in Missouri of goods stolen in Illinois. The only evidence that the defendant, Andrew, had possession of the goods in Illinois was that of three witnesses, who testified

to statements made by the defendant which showed that he had taken the goods in Illinois and carried them to Missouri under circumstances which necessarily proved that he knew that they were stolen. The Circuit Court of Appeals held that the erroneous charge was therefore not prejudicial to the defendant, and affirmed the judgment of conviction, saying (page 244):

> But the only possession by Andrew of the property in this district of which there was any evidence was the possession which was testified to by these three witnesses, and it thus necessarily follows that the jury must have believed the story of these witnesses. And if they believed these witnesses, they must have believed that Andrew told them the story to which they testified, with reference to the manner in which the goods came to be in the house of himself and brother in Missouri. There is no place in the story at which a jury could have drawn a line of cleavage between the proof of his having had possession of the property in Illinois and the proof of Andrew's knowledge that it was stolen. * * * If the jury believed, as they must have believed, in order to convict, the evidence of these witnesses, they must, in the absence of any qualifying facts and circumstances, inevitably have concluded, not only that Andrew was in possession of the goods in Illinois, but that, when he came into possession of them he knew they had been stolen.

Hamilton v. *United States* (C. C. A. 4th Circuit), 268 Fed. 15, certiorari denied, 254 U. S. 645, involved a refusal by seamen to serve to the end of the voyage. The sole ground for the refusal, as stated to the master and shown by the evidence in the case, was an erroneous construction of the federal statutes relating to voyages, and imposing duties on the ship and seamen for the voyage. This position being untenable, the testimony on both sides made out an indisputable case of guilt. It was held that under these circumstances the request to charge was inapplicable, and any erroneous statement of law in the charge was immaterial.

CONCLUSION

THE JUDGMENT OF THE CIRCUIT COURT OF APPEALS SHOULD BE AFFIRMED.

WILLIAM D. MITCHELL,
Solicitor General.
GARDNER P. LLOYD,
Special Assistant to the Attorney General.

APRIL, 1926.

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SUPREME COURT OF THE UNITED STATES.

No. 255.—October Term, 1925.

Oscar Thornton, Shabie Thornton, Inman Thornton, et al., Petitioners, *vs.* The United States of America.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[June 1, 1926.]

Mr. Chief Justice Taft delivered the opinion of the Court.

This case comes here by certiorari from the Circuit Court of Appeals of the Fifth Circuit. 267 U. S. 589. The judgment is one of conviction of the petitioners under an indictment found in the District Court for the Southern District of Georgia, charging the petitioners and sixteen others with the crime of conspiracy under section 37 of the Criminal Code to commit the offense against the United States denounced in section 62 of the same Code. Section 62 punishes anyone who shall assault or interfere with an employee of the Bureau of Animal Industry of the Agricultural Department in the execution of his duties or on account of his execution of them, and who shall use a deadly weapon in resisting any such employee in such execution. The indictment was demurred to and the demurrer was overruled. The defendants were tried and found guilty. On writ of error the Circuit Court of Appeals affirmed the judgment. 2 Fed. (2nd) 561.

The first count of the indictment charged that the defendants conspired to deter and prevent certain employees of the Bureau of Animal Industry from discharging their duties in supervising the dipping of, and causing to be dipped, cattle in order to prevent the spread of splenetic fever among them, and to eradicate the cattle fever tick, and that for this purpose the defendants used deadly weapons and killed one such employee and wounded others, all in the county of Echols, Georgia. The second count charged that the conspiracy was directed not only to the use of force against the employees themselves but also to the dynamiting of spray pens

and dipping vats used by such employees in their duties in causing the dipping of the cattle and the supervision thereof.

Under the Act of May 29, 1884, 23 Stat. 31, c. 60, a Bureau of Animal Industry was organized in the Department of Agriculture. It is made the duty of the Bureau, by section 1, to investigate and report upon the condition of the domestic animals, their protection and use, to inquire into and report the causes of contagious, infectious and communicable diseases among them and to collect information on the subject. By section 2 it is authorized to employ experts. By section 3, it is made the duty of the Commissioner of Agriculture to prepare such rules and regulations as may be deemed necessary for the supervision and effective suppression and extirpation of such diseases, and to certify such rules and regulations to the executive authorities of each state and territory, and invite them to cooperate in the execution and enforcement of the Act. Whenever the plans and methods are accepted by any state or territory, in which such diseases are declared to exist, and the state or territory has adopted plans and methods for the suppression and extirpation of the diseases, and those plans shall be accepted by the Commissioner of Agriculture, and whenever a governor or other properly constituted authority of a state signifies his readiness to cooperate for the extinction of such disease in conformity with the Act, the Commissioner is authorized to expend so much of the money appropriated as may be necessary in such investigation and in such disinfection and quarantine measures as may be necessary to prevent the spread of the disease from one territory or state into another.

By an Act of February 9, 1889, 25 Stat. 659, c. 122, the Department of Agriculture was made an executive department of the Government under a Secretary of Agriculture, who was vested with all the authority conferred by the Act of May 29, 1884, *supra*, on the Commissioner of Agriculture. By Act of February 2, 1903, 32 Stat. 791, c. 349, the Secretary of Agriculture was authorized and directed from time to time to make regulations concerning the exportation and transportation of live stock from any place within the United States where he had reason to believe a contagious cattle disease existed into and through any other state or territory as he might deem necessary, and all such rules and regulations were to have the force of law. Whenever any inspector or assistant inspector of the Bureau of Animal Industry issued a certificate show-

ing that the officer had inspected any cattle or other live stock to be transported from one locality to another and had found them free from Texas or splenetic fever infection or other disease, it was provided that the cattle might be shipped, driven or transported from one state or territory to another without further inspection, but that such animals should at all times be under the control and supervision of the Bureau for the purposes of such inspection, and that the Secretary might make regulations to prevent the introduction or dissemination of contagion from one state to another.

By Act of March 3, 1905, 33 Stat. 1264, c. 1496, the Secretary is authorized and directed to quarantine any state or territory, or any portion of any state or territory, when he shall determine the fact that cattle or other live stock therein are affected with any communicable disease. Section 2 of that Act prohibits the transportation, delivery for transportation, or driving on foot from any quarantined state or territory into any other state or territory, cattle or live stock except as provided in the Act. Sections 3 and 4 give the Secretary authority to make rules and regulations for the inspection, disinfection, certification, treatment, handling and method and manner of delivery and shipment of cattle or other live stock from a quarantined state into any other state when the public safety will permit, but prohibits such movement in manner or method or under conditions other than those prescribed by the Secretary.

Under date of June 15, 1916, various regulations were issued by the Secretary of Agriculture. They are not printed in the record, but they are matters of which we may take judicial notice. *Caha* v. *United States*, 152 U. S. 211. Under the regulations when the Secretary determines that cattle in any state or territory are affected with a contagious disease, and he thinks a quarantine should be established, a rule is to be issued giving notice of the fact, to forbid the interstate movement of live stock from the quarantined area to be prescribed. Regulation 2 provides that cattle of the quarantined area exposed to or infested with ticks which have been properly dipped twice with a certain solution and in the proper way under the supervision of an inspector of the Bureau, may be moved interstate for any purpose when the inspector certifies them to be free of infection from splenetic fever; provided that the conditions are such that the cattle may be moved to the free area without exposure to infection. The cattle are to

be accompanied by a statement of dipping by the inspector supervising the same at the point of origin, and showing the ownership of the cattle, etc., and that cattle located in areas where tick eradication is being conducted in cooperation with the state authorities, and which are on premises known by the Bureau of Inspection to be free from ticks, may upon inspection and certification at a suitable season by a bureau inspector be moved interstate for any purpose without dipping. One rule issued by the Secretary of Agriculture shows a description of the areas quarantined, which included Echols County, Georgia.

The evidence for the Government at the trial showed that Echols County where this conspiracy was formed and the overt acts took place, was on the line between Georgia and Florida, that cattle ranged between one state and the other in that region, that the Department of Agriculture had quarantined in interstate transportation the cattle coming from Echols County because of the presence of the cattle tick among them, that under the Act an agreement had been made between the Secretary of Agriculture and the Georgia authorities acting under a Georgia statute, by which the regulations of the Secretary had been accepted as guidance for the State employees engaged in attempting to suppress the disease by requiring tick infested cattle to be dipped, that spray pens and dipping vats had been erected in Echols County at the expense of the United States, to carry out the duties of the Bureau of Animal Industry, that the State law authorized and directed the county and State to enforce the dipping of cattle in the county which were tick infested by process served in the name of the State, and that the State officers served such processes upon cattle owners in the county, that the cattle which were thoroughly dipped were marked with indelible paint, that United States inspectors were not always present at the dipping but usually supervised what was done to gain a knowledge of what the State officers were doing in enforcing the State law, so that if successful the quarantine against cattle for shipment out of Georgia against Echols County could be discontinued, that this was only one instance of the investigations required under the Act of 1884 by the Bureau of Animal Industry employees to help cattle movements from the southern states to the north in promotion of interstate commerce, that it was while these activities of the employees of the Federal Bureau were progressing that the defendants and others,

residents of Echols County, owners of cattle and neighbors, resenting the necessity for dipping, dynamited the spray pens and the dipping vats and assaulted the United States employees of the Bureau, wounded several and killed one by gun shot.

The first objection to the conviction is based on the indictment in that it contains no allegation that the regulations of the Secretary of Agriculture for the suppression and extirpation of the disease among live stock have been certified to the executive authority of the State of Georgia and accepted. The legality and validity of the action of the Secretary of Agriculture and the Bureau of Animal Industry in preventing the spread of disease from one state to another do not depend upon the consent of the state authorities. In the broad provisions of the legislation we have quoted, the authority of the Secretary of Agriculture to direct the employees of the Bureau of Animal Industry to engage in quarantine measures and the inspection of animals suspected of or known to have communicable diseases, is not limited to cases in which there is cooperation between the United States and the state authorities in the suppression of the spread of disease among cattle, the one as between states and the other as within a state. In order to make the action of both more effective, they may cooperate so that their respective purposes may be more effectively carried out, but the power of each to act in its field does not depend upon the consent of the other. Therefore it is that such an averment as that suggested by the defendants' objection would be superfluous for the indictment of the Federal crime, although it would be quite relevant in evidence as one of the circumstances to explain what happened.

It is next objected that there were no allegations in the indictment that the cattle being dipped were the subject matter of interstate commerce or had in any way under the law become subject to the supervision or control of the Secretary of Agriculture, or that what the employees were doing was to prevent the spread of communicable disease among the cattle from one state to another. The charge is of a conspiracy to commit the offense of an assault upon employees of the Bureau of Animal Industry, to prevent the execution of their duties as such, and does not charge the substantive offense itself. The rules of criminal pleading do not require the same degree of detail in an indictment for conspiracy in stating the object of the conspiracy as if it were one charging the sub-

stantive offense. *Williamson* v. *United States*, 207 U. S. 425, 447; *Wolf* v. *United States*, 283 Fed. 885; *Foster* v. *United States*, 256 Fed. 207. Compare *Ledbetter* v. *United States*, 170 U. S. 606, 612; *Connors* v. *United States*, 158 U. S. 408, 411; *Armour Packing Co.* v. *United States*, 209 U. S. 56, 84.

The assaults upon the employees of the Bureau of Animal Industry and the interference with their duties were described in the indictment as having to do with the inspection of suspected cattle and the supervision of their dipping. As their duties in connection with suspected and diseased cattle were described in the statute as imposed for the purpose of preventing the spread of contagious cattle disease from one state to another, it is sufficient certainty to a common intent to describe generally that they were performing their duties under the statute in the supervision and dipping of cattle, without further definition.

It is finally urged against this conviction that the statute of 1884, *supra*, is unconstitutional in that Congress had no power to make it a duty of a Federal employee to dip cattle and suppress disease among cattle within a State, that such power is vested in the Legislature of the state under the reservations of the Tenth Amendment to the Federal Constitution, and that such legislation by Congress can not be sustained as a regulation of interstate commerce, because it is not confined to interstate commerce and the cattle treated were not in interstate commerce.

It is very evident from the Act of 1884 and the subsequent legislation and the regulations issued under them that everything authorized to be done was expressly intended to prevent the spread of disease from one state to another by contagion, which of course means by the passage of diseased cattle from one state to another. This is interstate commerce. The quarantine provided for was to stop and regulate such interstate commerce until it could be safely carried on. Not until suitable inspection by the Federal authorities and treatment prescribed for dipping of the cattle could the cattle be certainly rid of the ticks and splenetic fever and prevented from being a dangerous source of contagion in the state into which they were going. The duties of the employees of the Bureau of Animal Industry here interfered with were all part of the measure of quarantine reasonably adapted to prevent the spread of contagion in and by interstate commerce.

The requirement of dipping was a reasonable condition of allowing cattle from a suspected district to pass into another state, and the provision of dipping vats and other means of complying with this requirement in a border county by the United States, and the supervision of such dipping by Federal employees and indeed the dipping itself by them were conveniences promoting interstate commerce where quarantine was necessary. There is no evidence that Federal employees took part in enforcing dipping of all cattle of the county. That was done by State officers under the State law.

But it is said that these cattle do not appear to have been intended to be transported by rail or boat from one state to another and this only is interstate commerce in cattle under the Constitution. They were on the line between the two States. To drive them across the line would be interstate commerce, and the Act of 1905 expressly prohibits driving them on foot when carrying contagion. It is argued, however, that when the cattle only range across the line between the States and are not transported or driven, their passage is not interstate commerce. We do not think that such passage by ranging can be differentiated from interstate commerce. It is intercourse between states, made possible by the failure of owners to restrict their ranging and is due, therefore, to the will of their owners.

More than this, it is established by *United States* v. *Ferger*, 250 U. S. 199, that the authority of Congress over interstate commerce extends to dealing with and preventing burdens to that commerce and the spread of disease from one state to another by such cattle ranging would clearly be such a burden, if it were not to be regarded as commerce itself and is therefore properly within the congressional inhibition. *Stafford* v. *Wallace*, 258 U. S. 495.

Judgment affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.